



AGENDA  
LEGAL COMMITTEE MEETING  
**Thursday, May 25, 2017 at 4:00PM**  
City Hall Conference Room  
425 N. Richardson, Roswell, NM 88201

CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

Approval of the minutes from the Legal Committee meeting on **April 27, 2017**. *p. 3*

REGULAR ITEMS

1. To recommend to full Council that the following RIAC agreements to existing leases be placed on the Consent agenda for approval: *p. 5*
  - (A) Consider approval to authorize Cactus Transport, LLC, an Arizona Corporation, to renew their current lease agreement on an area of land and the gate house which are a portion of the fenced tank farm. *p. 9*
  - (B) Consider approval to authorize Charles R. Murphy, II, an individual, to renew his current lease agreement on Building No. 255 and a fenced area. *p. 11*
  - (C) Consider approval to authorize David L. Partain, an individual, to renew his current lease agreement on "T" Hangar No. 120, Space 1. *p. 13*
  - (D) Consider approval to authorize Walker Aviation Museum Foundation, to renew their current lease agreement on an office area in Building No. 1 located inside the front entrance to the Terminal and the office area across and west of this location. *p. 15*
  - (E) Consider approval to authorize Veterinarians Outlet of NM, Inc., a New Mexico Corporation, to renew their current lease agreement on a portion of Building No. 112A. *p. 17*
2. Discussion and possible recommendation of approval of an Amended Joint Powers Agreement ("JPA") allowing the City and Chaves County to operate the Pecos Valley Regional Communications Center ("PVRCC"). *p. 19*
3. Discussion and possible recommendation of approval of Agreement with the SE New Mexico Economic Development District/COG for FY 2017-18. *p. 39*
4. Discussion and possible recommendation of approval of a lease agreement with the Roswell Hispano Chamber of Commerce. *p. 41*
5. Discussion and possible recommendation of approval of a lease agreement with the Historical Society for Southeastern New Mexico. *p. 48*
6. Discussion and possible recommendation of approval of a lease agreement with the Chaves County Flood Control. *p. 57*

*[Continued on Next Page]*

### NON ACTION ITEMS

7. Discussion only of possible text amendments addressing the use of public parking spaces. *p. 63*
8. Discussion of Proposed Ordinance 17-XX to modify Chapter 22 (Streets and Sidewalks), Article V (Recreational Vehicle and Trailer Parking Permitted), Section 22-50 allowing Recreational Vehicles to park with permit on City properties. *p. 64*
9. Planning and Zoning Commission Update

### PUBLIC PARTICIPATION

### ADJOURN

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 16-69.

NOTICE OF POTENTIAL QUORUM – A quorum of the City Council may or may not attend, but there will not be debate by the City Council. The Council, acting as attendees to an informational presentation, will not be discussing public business and no action will be taken.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary or other type of accessible format is needed.

Printed and posted: Monday, May 22, 2017

**Regular Meeting of the Legal Committee  
Held in the Conference Room at City Hall  
April 27, 2017**

Notice of this meeting was given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 16-69.

**ROLL CALL**

The meeting convened at 4:03 p.m. with Chairman Perry presiding and Councilors Oropesa and Best being present; Councilor Foster being absent.

Staff present: Bill Morris, Aaron Holloman, Sharon Coll, Joe Neeb and Scott Stark.

Guests present: Savino Sanchez

**APPROVAL OF AGENDA**

Councilor Best moved to approve the April 27, 2017 Legal Committee meeting agenda. Councilor Oropesa was the second. A voice vote was unanimous and the motion passed with Councilor Foster being absent.

**APPROVAL OF MINUTES**

Councilor Best moved to approve the minutes from the March 30, 2017 regular Legal Committee meeting. Councilor Oropesa was the second. A voice vote was unanimous and the motion passed with Councilor Foster being absent.

**REGULAR ITEMS**

To recommend to full City Council that the following RIAC agreements to existing leases be placed on the consent agenda for approval:

- A. American Aggregate, LLC, a New Mexico Limited Liability Corporation, to renew their current lease agreement on an area of land. Mr. Stark discussed the lease agreement. American Aggregate, LLC leases the 270,000 square foot area of land for the purpose of operating a concrete batch plant. New rent amount is \$507 monthly; \$6,084 annually. They have been customers since May 1995. Councilor Best moved to send on consent agenda American Aggregate, LLC lease agreement renewal subject to all terms and conditions. Councilor Oropesa was the second. A voice vote was unanimous and the motion passed with Councilor Foster being absent.
- B. Michael Joseph Rohrbacher, an individual, to renew his current lease agreement on an area of land and a container. Mr. Stark discussed the lease agreement. Michael Joseph Rohrbacher leases the 650 square foot area of land and container for the purpose of storage of display fireworks. New rent amount is \$121 monthly; \$1,452 annually. He has been a customer since June 2009. Councilor Best moved to send on consent agenda Michael Joseph Rohrbacher lease agreement renewal subject to all terms and conditions. Councilor Oropesa was the second. A voice vote was unanimous and the motion passed with Councilor Foster being absent.

**FOR THE RECORD:** Councilor Foster joined at 4:17 p.m.

Proposed Ordinance 17-15 – Consider recommendation to full council of Proposed Ordinance 17-15, permitting off-highway vehicles to operate on paved city streets. Mr. Holloman discussed Proposed

Ordinance 17-15. Currently, off-highway vehicles are not permitted to operate on City streets. By State Statute, municipalities may permit off-highway vehicle use on paved streets owned by the City. Several other municipalities have followed the state's lead in permitting these vehicles to be operated on municipal roadways subject to certain limitations. Item died for lack of motion.

Proposed Ordinance 17-13 – Consider approval to advertise for a public hearing to be held and voted on at a regular city council meeting for May 11, 2017, for Proposed Ordinance 17-13 for addressing allowing flow of water onto public rights-of-way is unlawful. Article 6, Section 25 of the City Code of Ordinances currently addresses the wasting of water when it is being allowed to flow into the streets. Staff determined that the provisions need to be stated more clearly. Item died for lack of motion.

Proposed Ordinance 17-12 – Consider approval to advertise for a public hearing for Proposed Ordinance 17-12 to modify Article 23, Section 10 (Lighting). Mr. Morris discussed Proposed Ordinance 17-12. The following text amendments are intended to address LED lighting that is being installed in parking lot situations. These lights are much brighter than conventional lighting which can cause issues with adjacent properties. Councilor Best moved to send Proposed Ordinance 17-12 – modify Article 23, Section 10 (Lighting) to City Council for approval to advertise for a public hearing. Councilor Foster was the second. A voice vote was unanimous and the motion passed.

Proposed Ordinance 17-14 – Consider approval to advertise for a public hearing for Proposed Ordinance 17-14 for addressing Multi-Generational Housing. Mr. Morris discussed Proposed Ordinance 17-14. Article 3-21-1(F) NMSA states that local jurisdictions are required to address “Multi-Generational Housing” in their respective land development regulations. This accessory housing is intended to allow a relative to reside onsite but in their own structure. These amendments will provide review criteria that will ensure that multi-generational housing will be used as intended by State Statutes. Councilor Foster moved to send Proposed Ordinance 17-14 – addressing Multi-Generational Housing to City Council for approval to advertise for a public hearing. Councilor Oropesa was the second. A voice vote was unanimous and the motion passed.

### **NON-ACTION ITEMS**

Discussion only of possible text amendments addressing the use of public parking spaces. This item to be discussed at next Legal Committee meeting.

Update on agenda and activity for Planning and Zoning Commission. Bill Morris discussed updates and activity for Planning and Zoning Commission. The Salvation Army was approved for a special use permit for a new structure.

### **PUBLIC PARTICIPATION**

NONE

### **ADJOURN**

Meeting adjourned at 5:07 p.m.

**ROSWELL NEW MEXICO**  
**Legal Committee**  
**Thursday, May 25, 2017 at 4:00 p.m.**  
**City Hall Conference Room**  
**425 N. Richardson – Roswell, NM 88201**

**ACTION REQUESTED:**

Consider approval to authorize Cactus Transport, LLC, an Arizona Corporation, to renew their current lease agreement on an area of land and the gate house which are a portion of the fenced tank farm.

Consider approval to authorize Charles R. Murphy, II, an individual, to renew his current lease agreement on Building No. 255 and a fenced area.

Consider approval to authorize David L. Partain, an individual, to renew his current lease agreement on "T" Hangar No. 120, Space 1.

Consider approval to authorize Walker Aviation Museum Foundation, to renew their current lease agreement on an office area in Building No. 1 located inside the front entrance to the Terminal and the office area across and west of this location.

Consider approval to authorize Veterinarians Outlet of NM, Inc., a New Mexico Corporation, to renew their current lease agreement on a portion of Building No. 112A.

**BACKGROUND:**

Cactus Transport, LLC, leases the area of land and the gate house for the purpose of truck parking. 43,560 square feet. New rent amount is \$359 monthly; \$4,308 annually. Rent adjustment is 2.57%. Cactus Transport, LLC, has been a customer since May 2016.

Charles R. Murphy, II, leases the building and fenced area for the purpose of storage. 1,344 square feet. New rent amount is \$200 monthly; \$2,400 annually. Rent adjustment is 5.82%. Charles R. Murphy, II, has been a customer since July 2011.

David L. Partain leases the building for the purpose of aircraft storage and maintenance. 1,175 square

feet. New rent amount is \$184 monthly; \$2,208 annually. Rent adjustment is 2.79%. David L. Partain has been a customer since July 2002.

Walker Aviation Museum Foundation leases the office spaces for the purpose of operating a museum associated with the former Walker Air Force Base. 456 and 930 square feet respectively. New rent amount is \$268 monthly; \$3,216 annually. Rent adjustment is 3.51% and 3.45% respectively. Walker Aviation Museum Foundation has been a customer since July 2010.

Veterinarians Outlet of NM, Inc., leases a portion of the building for the purpose of soaps, sanitizers, and detergents associated with the dairy industry. 9,753 square feet. New rent amount is \$1,528 monthly; \$18,336 annually. Rent adjustment is 2.50%. Veterinarians Outlet of NM, Inc., has been a customer since June 2006.

#### **FINANCIAL CONSIDERATION:**

Cactus Transport, LLC, leases the area of land and the gate house for the purpose of truck parking. 43,560 square feet. New rent amount is \$359 monthly; \$4,308 annually. Rent adjustment is 2.57%. Term: July 1, 2017 through June 30, 2018.

Charles R. Murphy, II, leases the building and fenced area for the purpose of storage. 1,344 square feet. New rent amount is \$200 monthly; \$2,400 annually. Rent adjustment is 5.82%. Term: July 1, 2017 through June 30, 2018.

David L. Partain leases the building for the purpose of aircraft storage and maintenance. 1,175 square feet. New rent amount is \$184 monthly; \$2,208 annually. Rent adjustment is 2.79%. Term: July 1, 2017 through June 30, 2018.

Walker Aviation Museum Foundation leases the office spaces for the purpose of operating a museum associated with the former Walker Air Force Base. 456 and 930 square feet respectively. New rent amount is \$268 monthly; \$3,216 annually. Rent adjustment is 3.51% and 3.45% respectively. Term: July 1, 2017 through June 30, 2018.

Veterinarians Outlet of NM, Inc., leases a portion of the building for the purpose of soaps, sanitizers, and detergents associated with the dairy industry. 9,753 square feet. New rent amount is \$1,528 monthly; \$18,336 annually. Rent adjustment is 2.50%. Term: July 1, 2017 through June 30, 2018.

**LEGAL REVIEW:**

The City Attorney has reviewed the leases.

**BOARD / COMMITTEE ACTION:**

The legal committee is scheduled to meet on May 25, 2017.

*[continued on next page]*

**STAFF RECOMMENDATION:**

- (A) Consider approval of a one year lease with Cactus Transport LLC consisting of 43,560 square feet and the gate house which are a portion of the fenced tank farm located at the Roswell International Air Center for \$4,308.00 payable in 12 monthly installments of \$359.00 to be placed on consent agenda subject to all other terms and conditions of the lease.
- (B) Consider approval of a one year lease with Charles R. Murply, II consisting of Building No. 255 located at the Roswell International Air Center for \$2,400.00 payable in 12 monthly installments of \$200.00 to be placed on consent agenda subject to all other terms and conditions of the lease.
- (C) Consider approval of a one year lease with David L. Partain consisting of "T" Hanger No. 120 space 1 located at the Roswell International Air Center for \$2,208.00 payable in 12 monthly installments of \$184.00 to be placed on consent agenda subject to all other terms and conditions of the lease.
- (D) Consider approval of a one year lease with Walker Aviation Museum Foundation consisting of office area in Building 1 of 456 square feet located at the Roswell International Air Center for \$3,216.00 payable in 12 monthly installments of \$268.00 to be placed on consent agenda subject to all other terms and conditions of the lease.
- (E) Consider approval of a one year lease with Veterinarians Outlet of NM, Inc. consisting of a portion of Building No. 112 A of 9,753 square feet for \$18,336.00 payable in 12 monthly installments of \$1,528.00 to be placed on consent agenda subject to all other terms and conditions of the lease.



THIS LEASE executed in Roswell, New Mexico on this 8<sup>th</sup> day of June, 2017 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated "Landlord", and CACTUS TRANSPORT, LLC., an Arizona corporation, hereinafter designated as "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

<b>An area of land consisting of 43,560 square feet, more or less and the gate house which are a portion of the fenced tank farm, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).</b>
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2. TERM. The Lease term is for one (1) year, commencing on July 1, 2017 and ending June 30, 2018 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Four Thousand, Three Hundred, Eight Dollars and No Cents (\$4,308.00), payable in 12 monthly installments of \$359.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$350.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s)

## EXHIBIT “A”



## EXHIBIT “A”

THIS LEASE executed in Roswell, New Mexico on this 8<sup>th</sup> day of June, 2017 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and CHARLES R. MURPHY, II, an individual, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

<b>Building No. 255 consisting of 1,344 square feet, more or less, and a fenced area located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).</b>
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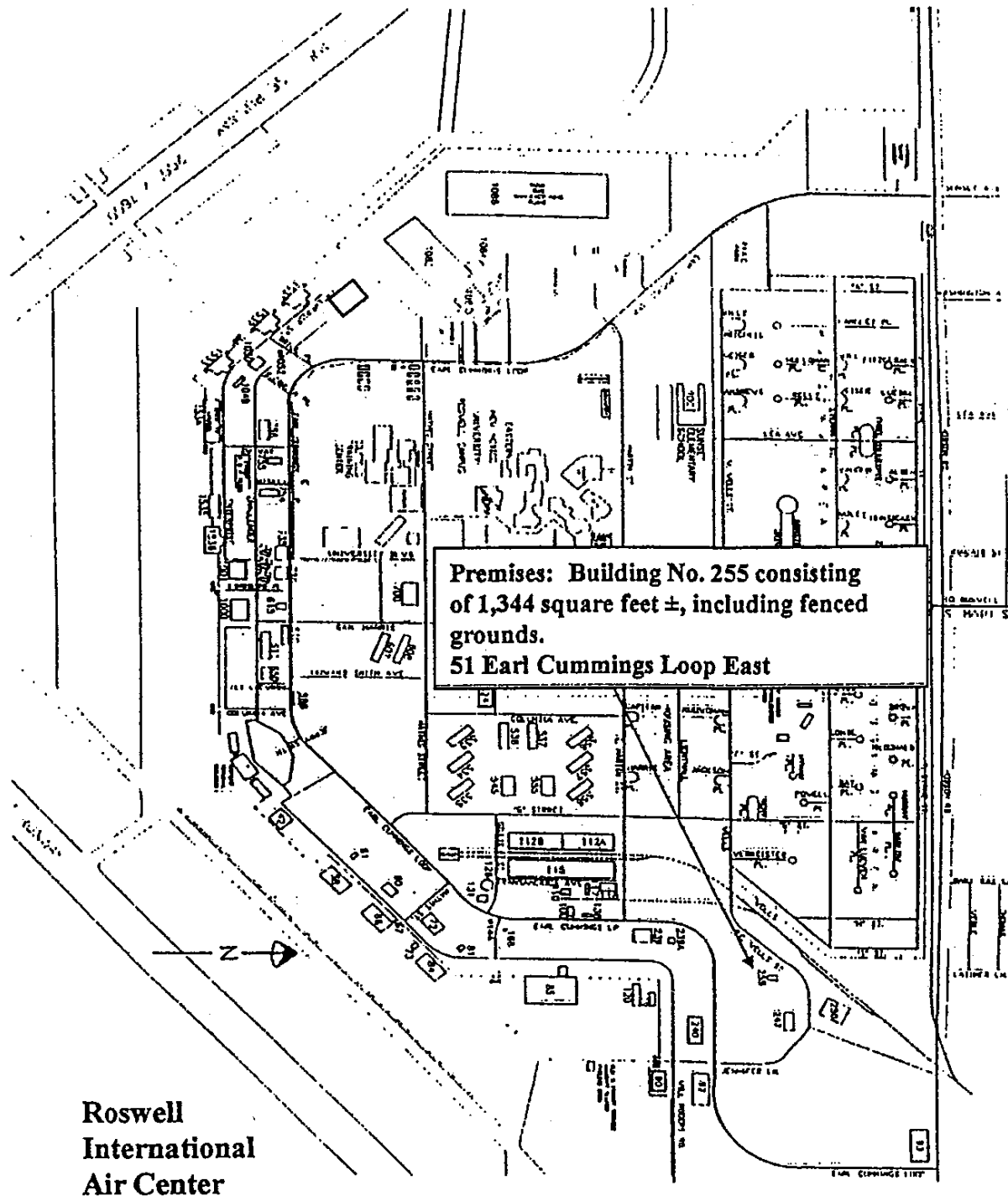
2. TERM. The Lease term is for one (1) year, commencing on July 1, 2017 and ending June 30, 2018 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, Four Hundred and No Cents (\$2,400.00), payable in 12 monthly installments of \$200.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$165.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

# EXHIBIT "A"



# EXHIBIT "A"

THIS LEASE executed in Roswell, New Mexico on this 8<sup>th</sup> day of June, 2017 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and DAVID L. PARTAIN, an individual, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

"T" Hangar No. 120 space 1 consisting of 1,175 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" 'Premises).
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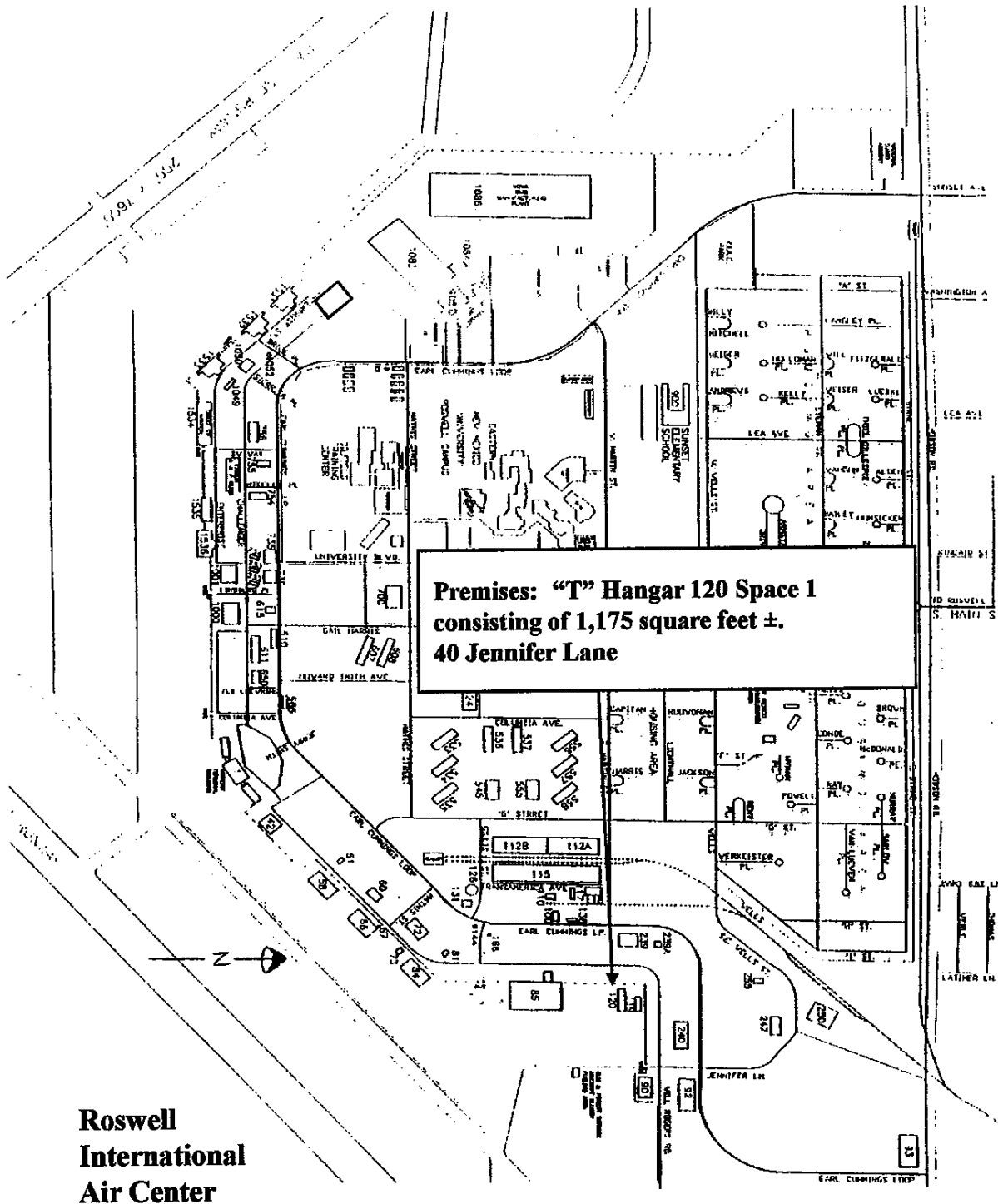
2. TERM. The Lease term is for one (1) year, commencing on July 1, 2017 and ending June 30, 2018 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Two Thousand, Two Hundred Eight Dollars and No Cents \$2,208.00, payable in 12 monthly installments of \$184.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$140.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages 'beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition, "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation's) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein.

# EXHIBIT "A"



# EXHIBIT "A"

THIS LEASE executed in Roswell, New Mexico on this 8<sup>th</sup> day of June, 2017 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and WALKER AVIATION MUSEUM FOUNDATION, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

Office area in Building No. 1 consisting of 456 square feet, more or less, located inside the front entrance to the Terminal and the office area across and west of this location consisting of 930 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).
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2. TERM. The Lease term is for one (1) year, commencing on July 1, 2017 and ending June 30, 2018 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Three Thousand, Two Hundred Sixteen Dollars and No Cents (\$3,216.00), payable in 12 monthly installments of \$268.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Intentionally left blank.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE.

a. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant further agrees, at its sole cost and expense, to maintain the Premises, including improvements, in a clean and policed condition at all times and attractively maintained.

b. Tenant shall make necessary corrections and/or adjustments to maintenance practices as inspections reasonably determine. Landlord shall be the sole and reasonable judge of the quality of maintenance



**PREMISES:** Office Space in the Terminal, Building No. 1, consisting of 456 square feet  $\pm$  and 930 square feet  $\pm$ .

1 Jerry Smith Circle

**-16-**



THIS LEASE executed in Roswell, New Mexico on this 8<sup>th</sup> day of June, 2017 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter "Landlord", and VETERINARIANS OUTLET OF NM, INC., a New Mexico corporation, hereinafter "Tenant".

WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

A portion of Building No. 112A consisting of 9,753 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" (Premises).
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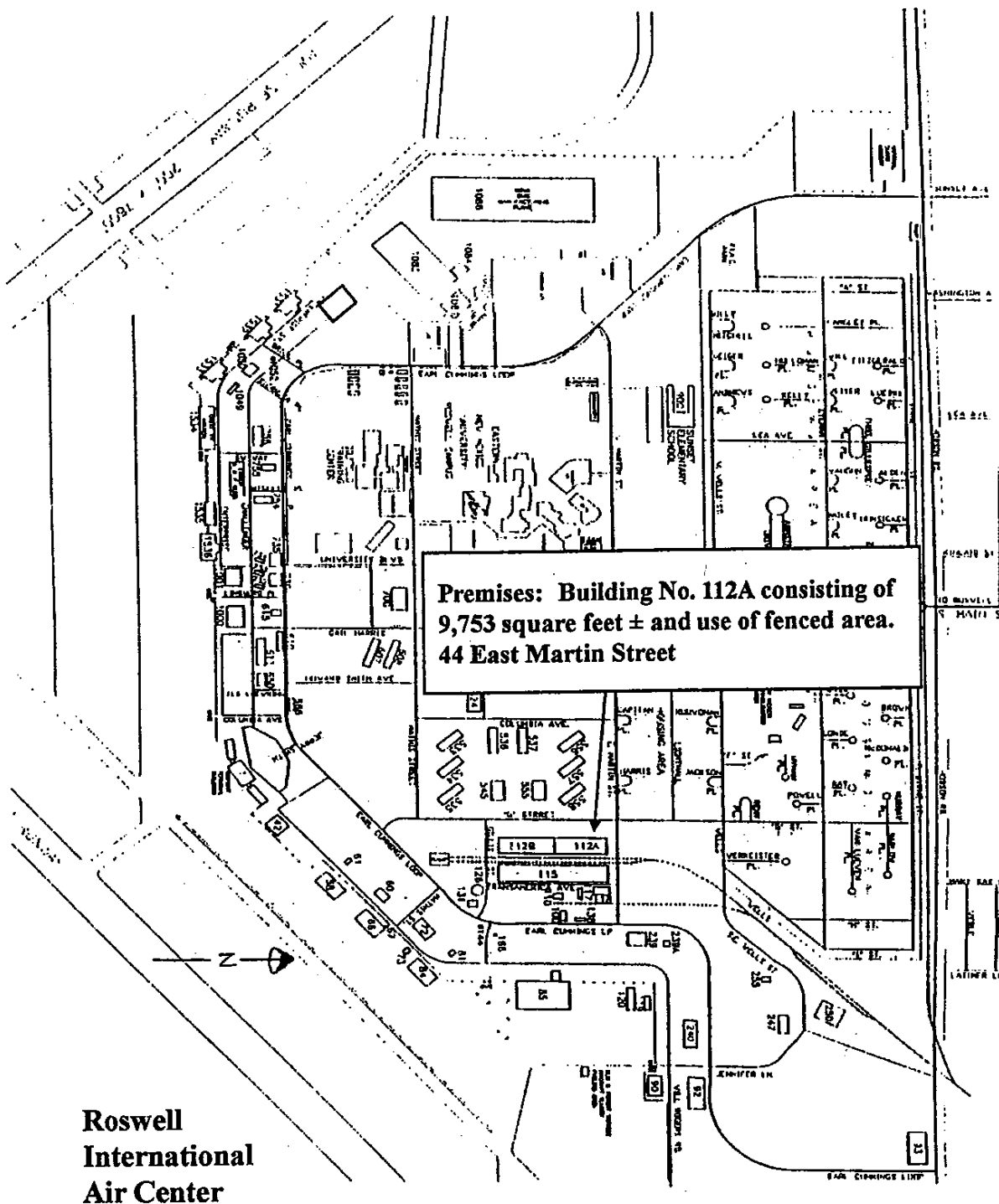
2. TERM. The Lease term is for one (1) year, commencing on July 1, 2017 and ending June 30, 2018 unless sooner terminated by provision hereof.

3. RENT. Tenant agrees to pay to Landlord as rent the sum of Eighteen Thousand, Three Hundred Thirty Six Dollars and No Cents (\$18,336.00) payable in 12 monthly installments of \$1,528.00. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant has paid \$1,150.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s)

# EXHIBIT "A"



# EXHIBIT "A"



## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion and possible recommendation of approval of an Amended Joint Powers Agreement ("JPA") allowing the City and Chaves County to operate the Pecos Valley Regional Communications Center ("PVRCC").

#### **BACKGROUND:**

The original Joint Powers Agreement was executed in 2005 allowing for the City and the County to provide a shared dispatch center providing service throughout the shared jurisdiction of the two bodies. At the request of the current director, an amended JPA was drafted to update some of the procedures to reflect how the PVRCC is currently operated.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request as no financial changes were made to the JPA.

#### **LEGAL REVIEW:**

The City Attorney has drafted and reviewed the agreement.

#### **BOARD OR COMMITTEE ACTION:**

The Pecos Valley Regional Communication Center Board voted to approve the JPA at the December 16, 2016 meeting. The Legal Committee is scheduled to meet on Thursday, May 25, 2017.

#### **STAFF RECOMMENDATION:**

Discussion and possible recommendation of approval of an Amended Joint Powers Agreement ("JPA") allowing the City and Chaves County to operate the Pecos Valley Regional Communications Center ("PVRCC").

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#### **Attachments:**

- 1) Amended Joint Powers Agreement – SHOWING CHANGES
- 2) Amended Joint Powers Agreement - CLEAN

**AMENDED JOINT POWERS AGREEMENT**  
between the  
**CITY OF ROSWELL, NEW MEXICO**  
and  
**CHAVES COUNTY, NEW MEXICO**

**ESTABLISHING THE PECOS VALLEY REGIONAL  
COMMUNICATIONS CENTER**

THIS JOINT POWERS AGREEMENT, (the "Agreement") is entered into by and between the City of Roswell, New Mexico (the "City") and Chaves County, New Mexico (the "County"), as of the date of execution by the New Mexico Department of Finance and Administration.

**PURPOSES**

The purposes of this Joint Powers Agreement are: to define the terms and conditions for operating, administering and maintaining a joint enhanced 911 Regional Emergency Communications Center; to provide emergency telephone access for the citizens of the City and County; to obtain needed emergency services including fire, EMS and law enforcement services; and to provide for the emergency communications needs of the public safety agencies of the City and County.

**RECITAL**

**WHEREAS**, the parties desire to establish and provide a centralized enhanced 911 communications system and thereby improve public emergency medical service, fire, rescue and law enforcement services to their citizens; and

**WHEREAS**, the parties within their respective jurisdictions may incur costs for the purchase or lease, installation and maintenance of equipment necessary for the establishment of an enhanced 911 communications system at public safety answering points, and

**WHEREAS**, the parties may pay such costs through disbursements from the enhanced 911 fund pursuant to NMSA 1978 63-9d-4 (Cum Sup 1993); and

**WHEREAS**, in order to improve emergency communications among public safety agencies, the Communications Center and citizens of our community it is in the best interests of the City and County to participate in a jointly combined, operated, administered and maintained regional emergency communications center; and

**WHEREAS**, the parties recognize that a jointly operated regional emergency communications center will be viewed favorably for the purposes of obtaining grants and additional outside funding; and

**WHEREAS**, the City and County, in accordance with and pursuant to the Joint Powers Agreement Act, NMSA 1978, 11-1-1 through 11-1-7, are undertaking to combine their Enhanced 911 emergency communications functions in order to provide efficient and effective emergency communications for the citizens of our communities and for their public safety agencies.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT:**

## **ARTICLE I**

### **ESTABLISHMENT OF REGIONAL E-911 COMMUNICATIONS CENTER**

Pursuant to the New Mexico Enhanced 911 Act, NMSA 1978, 63-9D-41 (et.Seq.) (1993) (the "Act") the Pecos Valley Regional Communications Center District (the "District") is formed as a legal entity for the express purpose of exercising the powers conferred upon local governing bodies by the Act. The District shall oversee operations of Enhanced 911 communication services within the District boundaries and act as the vehicle through which the parties receive funding pursuant to the Act. The District boundaries include all of Chaves County.

## **ARTICLE II**

### **A. CREATION OF BOARD:**

The District shall be governed by a board consisting of members from each of the participating funding agencies. The board shall be identified as the Pecos Valley Regional Communications Center Board (the "Board").

### **B. REPRESENTATIVES:**

The Board is hereby established to provide administrative oversight and direction for the District and shall advise the governing bodies of the City and County on its operation. Each Board member shall have one vote and can vote by designated proxy. The terms of each Board member shall be coincident with their respective terms of office except the at large member who shall serve at the pleasure and upon a consensus of the City and County Managers. A majority of the members shall constitute a quorum and a majority vote of a quorum present at a duly called meeting shall decide any issue. The Chair shall always be entitled to vote. The Board shall consist of the following:

1. The Police Chief of the City of Roswell.
2. The Fire Chief of the City of Roswell.
3. The City Manager of the City of Roswell.
4. The Sheriff of Chaves County.

5. The Chair of the Chaves County Fire Board.
6. The County Manager of Chaves County.
7. One member shall represent the community at-large and will be appointed by agreement of the City and County Managers.

**C. DUTIES AND POWERS OF BOARD:**

The duties of the Board shall include, but not be limited to, the following:

1. Annually elect one member in December to act as the Chairperson of the Board effective the following January.
2. As soon as possible following the first meeting of the Board, the Chairperson shall notify the Department of Finance, Local Government Division and the local exchange telephone company(s) providing local exchange service to the 911 service area within the District boundaries regarding the cost to the Board to purchase, lease, install and maintain necessary Enhanced 911 services pursuant to 63-9D-5 of the Act.
3. Hire, fire and provide direction to the Director of the District on matters of policy and budget, but with the express limitation that the Board shall not be directly ~~be~~ responsible for or empowered to make any personnel decisions other than the hiring and firing of the Director.
4. Conduct periodic meetings with staff to receive reports and provide guidance and direction to the Director.
5. Review revenue and expenses and approve an annual budget for the operation of the District, which shall be submitted for approval to the City and County as directed prior to March 1st of each year.
6. Ensure proper management and control over the budget and finances of the District.
7. Describe in writing the duties and responsibilities of the Director, and that ensure such description as provided by the City Human Resources Department accurately reflects the expectations of the Board.
8. Perform an annual performance re4view of the Director and other periodic reviews as needed.
9. Approve standard operating procedures and policies as developed by the Director for the operation of the District.
10. Approve and submit quarterly reports prepared by the Director to the governing bodies of the City and County.
11. Create and appoint by resolution such committees as it deems necessary.
12. Adopt procedural rules of order for Board meetings and meetings of any committees under the Board according to Art. II, Sec. D(4).
13. Adopt and comply with an annual Open Meetings Act Resolution.
14. Coordinate compliance through the Director and either City or County Clerks, as applicable, of any Public Records Request.
15. Establish, budget for and acquire insurance in amounts and with coverage appropriate to the risks assumed by the Board and District in their operations to the extent not provided for by either the City or the County.

16. Establish appropriate personnel and procurement policies to safeguard the rights of employees and assets.
17. Coordinate compliance with and take all requisite actions pursuant to the Act.

**D. MEETINGS:**

1. The Board shall meet regularly but no less than quarterly. In addition, the Board may also meet at the call of the any Board member, subject to the Chairperson's objection, upon proper notice and in compliance with the Board's duly adopted Open Meetings Act resolution. ~~(or at the call of the Chairperson upon proper notice and in compliance with the Board's duly adopted Open Meetings Act resolution).~~
2. The Board shall cause minutes of all meetings to be kept and shall provide copies of said meeting minutes to both City and County Clerks for retention as public records.
3. All Board meetings shall be held in accordance with the New Mexico Open Meetings Act.
- ~~3.4.~~ Board meetings shall be conducted according to the procedural rules of order as adopted by the City unless otherwise modified by this Board.

**E. LIMITATION TO POWERS OF THE BOARD:**

1. The Board shall not be involved in the day-to-day management of the District except as outlined above and shall only have such powers as have been expressly delegated by the City and County pursuant to this agreement, along with such incidental powers as may be reasonably necessary to effectuate the purpose and intent of this Agreement.

**ARTICLE III**

**ORGANIZATION OF THE DISTRICT**

**A. DISTRICT DIRECTOR:**

~~Will initially be the Communications Supervisor from the City, this arrangement can be modified by the Board.~~

The duties of the Director of the District shall include, but not be limited to, the following:

1. Maintaining a liaison with all agencies utilizing the communications center.
2. Reporting to the Board on matters related to management and finances, including the budget, operations and equipment associated with the operation of the District.



3. Preparing an annual budget and submitting it to the Board for approval prior to submission to City and County governing bodies for approval.
4. Delegating and performing the preceding and such other functions as may be reasonably necessary for the implementations of the purposes of this Agreement.
5. Planning, directing and ~~m~~ managing the activities of the District.
- ~~6. Hiring, firing, disciplining and training all District employees.~~
- ~~7.6.~~ Assigning, scheduling and supervising District employees.
- ~~Maintaining a liaison with all agencies utilizing the communications center.~~
- ~~9.7.~~ Reporting to the Board on matters related to management and finances, including the budget, operations and equipment associated with the operation of the District.
- ~~10. Preparing an annual budget and submitting it to the Board for approval prior to submission to City and County governing bodies for approval.~~
- ~~11.8.~~ Acting as the Central purchasing Officer for the District at such time as the District elects to employ its own financial officers.
- ~~12.9.~~ Delegating and performing the preceding and such other functions as may be reasonably necessary for the implementation of the purposes of this Agreement.

#### **B. DISTRICT PERSONNEL:**

~~In order to facilitate the orderly transition from City and County dispatch to a regional emergency communications center, the City and the County will locate existing dispatch personnel in a central location. Current County dispatchers will become City employees, and will be employed at not less than the employee's current hourly salary rate.~~

~~The dispatchers will be cross-trained and assigned to dispatch for both the City and the County.~~

All personnel employed at the District will be City employees subject to the City's policies and procedures, including hiring, termination, discipline, and training. The dispatchers will be cross-trained and assigned to dispatch for both the City and the County. The Director shall also be subject to the direction and supervision of the Board, pursuant to Art. II, Sec. C(3), and serves at the discretion of the Board.

### **ARTICLE IV**

#### **FINANCING OF THE DISTRICT**

##### **A. FISCAL AGENT:**

The City shall act as the Fiscal Agent for the District and shall collect all revenues accruing to, make all disbursements for and be responsible for financial reports pertaining to the operations of the District until such time as the District has a self-supporting finance department and staff.



## B. FINANCIAL RESPONSIBILITY OF CITY AND COUNTY:

- ~~1. In consideration of this agreement, the City and the County agree to dedicate existing dispatch personnel to the District, which will consist of nine dispatchers from the County, and ten dispatchers from the City. Initially, the City will dedicate a Communications Supervisor to function as the District Director. The City Communications Supervisor will be replaced when the Board opts to fire a full-time independent Director.~~
- ~~2.1. The fiscal agent, the City, will absorb the County personnel. The County will pay the City the cost of employing nine dispatchers, as currently budgeted. The City shall be responsible for sixty-percent of the total cost of employing the District personnel, including sixty-percent of the cost of employing the Director, and the County shall be responsible for forty-percent.~~
- ~~2. In the event that the continued operations of the District require additional capital expenditures, it is herein agreed that each party shall pay an equal share of any upfront costs required.~~
- ~~3. It is understood that the parties to this Agreement may make capital expenditures for the Regional Emergency Communication Center necessary for the transition to operation of said facility by the District prior to the actual first day of joint operation. It is herein agreed that each party shall pay an equitable share of the upfront costs for equipping the new Center prior to the first day of operation. It is not known at the present the exact procedure for equitable distribution of these transition and startup costs. However, it is expected that each party shall pay an equitable amount for the capital and operating expenditures, excluding the building cost for which the County shall be solely responsible, necessary for startup and operation of the new Center. Therefore, the responsibility for expenditures made by the parties to this agreement prior to the opening of the new Regional Emergency Communication Center shall be the subject of negotiations by and between the parties through their designated Board representatives who shall collectively be known as the "Transition Team". The Transition Team shall be charged with resolving the financial issues of the parties prior to the first day of operation of the Regional Emergency Communications Center as it is the intention of the parties to have any equitable adjustments, credits, or other compensation issues resolved prior to the opening of the new Regional Emergency Communication Center so that the District may begin its operation free from all claims, liabilities, expenses or encumbrances due to prior expenditures, work, construction, purchases or appropriations made individually or collectively by the City and County and leading up to the opening of the Regional Emergency Communication Center.~~
- ~~4.3. The County shall initially provide space to house the new Center without cost to the District. The City shall initially provide fiscal agent services to the District without cost.~~

5.4. It is the intention of the parties to pool all financial resources garnered from the State of New Mexico and any and all such other funding or grant~~ed~~ agencies including but not limited to disbursements from the enhanced 911 fund as may make contributions to the cost or expense of operations other than the parties themselves including, but not limited to disbursements from the enhanced 911 fund. Such funds are to be the property of the District itself and neither party shall be entitled to a credit, offset, deduction or other compensation for said funds regardless of who solicited, applied for, sought or obtained said funding.

6.5. The estimated operating expense budget shall be prepared by the Board and the Director and submitted annually to the City and the County, and shall be totally dependent upon the allocations made by the City Council and the County Commission (and may be less than the amount requested).

**C. SHARED FINANCIAL RESPONSIBILITY FOR DIRECTOR'S SALARY:**

The City and County agree to each be responsible for an equitable share of the Director's salary as set forth in Art. IV, Sec. B(1).

~~D. Notwithstanding the agreement to split personnel costs pursuant to Section IV, B. above, once the Board decides to hire an independent full-time Director, the County and City each agree to pay one-half of the estimated yearly compensation of the Director (to include salary and benefits) which amount shall not be included in the preceding estimate of operating expenses.~~

**E.D. ACCOUNTABILITY OF FUNDS:**

As long as the City is Fiscal Agent, it shall be strictly accountable for all funds disbursed pursuant to this Agreement and shall maintain appropriate records thereafter as prescribed by law.

**F.E. NATIONAL CRIME INFORMATION CENTER AND NEW MEXICO CRIME INFORMATION CENTER:**

The National Crime Information Center (NCIC) and the New Mexico Crime Information (NMCIC) functions will be provided by the District.

**G.F. MULTIPLE STREET ADDRESS GUIDE:**

The District shall be responsible for maintaining, updating and providing the necessary information to the telephone company as needed to maintain an accurate Street Address Guide for both the City and County to the extent this is not done by the County.

**ARTICLE V**

**TERMS OF AGREEMENT**

**A. TERM:**

This Agreement shall not become effective until approved by the Secretary of the New Mexico Department of Finance and Administration. The term of this Agreement shall be indefinite unless terminated as hereinafter provided.

**B. TERMINATION:**

This Agreement may be terminated by either party upon delivery of a written notice to the other party at least 180 days prior to the intended date of termination. By such termination, either party may not nullify or avoid any obligations required to have been performed prior to termination.

**C. LIABILITY:**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, section 41-4-1, et seq., NMSA 1978, as amended and the express immunity granted pursuant to 63-9D-10 of the Act.

**D. AMENDMENT:**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**E. GOVERNING LAW:**

This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.

**F. STATUS OF AGREEMENT; JPA ACT:**

The parties acknowledge and agree that this Agreement constitutes an "agreement": as that term is used in the New Mexico Joint Power Agreements Act, Section 11-1-1 through 11-1-7 NMSA 1978 (the "JPA Act").

**G. ACCOUNTABILITY:**

During the term of this Agreement and for a period of three years thereafter, each of the parties will maintain accurate and complete records of all disbursements made and monies received by each under this Agreement and, upon receipt of reasonable written request, each shall make such records available to the other party and to the public, including any federal, state or local authority during regular business hours.

**H. DISTRIBUTION OF RESIDUAL PROPERTY:**

At the end of the term, the parties will distribute and dispose of all property acquired in connection with this Agreement. If any property is acquired in connection with this Agreement, the division or distribution of which is not specifically provided for in this Agreement, then such property shall be distributed to the party that acquired it; or if the property was acquired by more than one party, the property shall be distributed to each party in accordance with the party's pro rata share of acquisition and maintenance costs, if any, unless otherwise agreed by the parties.

**I. CONFORMITY WITH JPA ACT:**

The parties intend that this Agreement conform in all respects with the JPA Act: and that this agreement shall be construed and enforced in conformity with the JPA Act. In case of any inconsistency between this Agreement and the JPA Act, the provision of the JPA Act shall control and this Agreement shall be deemed amended so that such controlling provision of the JPA Act are incorporated into and made part of this Agreement, and any inconsistent provision of this Agreement are deleted as and to the extent of the inconsistency.

**J. ALTERNATIVE DISPUTE RESOLUTION:**

The parties agree that in the event the terms and conditions of this Agreement are disputed, including but not limited to all financial calculations, expenditures, bills and related matters, the parties will attempt to resolve the dispute through mediation and in the event the mediation fails will agree to binding arbitration.

**IN WITNESS WHEREOF** the parties have executed this Agreement as the dates documented below:

**CITY OF ROSWELL:**

\_\_\_\_\_  
**DENNIS KINTIGH, MAYOR**

**DATE:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**SHARON COLL  
CITY CLERK**

**APPROVED AS TO FORM:**

**CHAVES COUNTY:**

\_\_\_\_\_  
**ROBERT CORN, CHAIR  
CHAVES COUNTY COMMISSION**

**DATE:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**DAVE KUNCO  
COUNTY CLERK**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**AARON HOLLOMAN**  
**CITY ATTORNEY**

\_\_\_\_\_  
**STAN RIGGS**  
**COUNTY ATTORNEY**

**THIS AGREEMENT HAS BEEN APPROVED BY:**

**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DRAFT

**AMENDED JOINT POWERS AGREEMENT**  
**between the**  
**CITY OF ROSWELL, NEW MEXICO**  
**and**  
**CHAVES COUNTY, NEW MEXICO**

**ESTABLISHING THE PECOS VALLEY REGIONAL  
COMMUNICATIONS CENTER**

THIS JOINT POWERS AGREEMENT, (the "Agreement") is entered into by and between the City of Roswell, New Mexico (the "City") and Chaves County, New Mexico (the "County"), as of the date of execution by the New Mexico Department of Finance and Administration.

**PURPOSES**

The purposes of this Joint Powers Agreement are: to define the terms and conditions for operating, administering and maintaining a joint enhanced 911 Regional Emergency Communications Center; to provide emergency telephone access for the citizens of the City and County; to obtain needed emergency services including fire, EMS and law enforcement services; and to provide for the emergency communications needs of the public safety agencies of the City and County.

**RECITAL**

**WHEREAS**, the parties desire to establish and provide a centralized enhanced 911 communications system and thereby improve public emergency medical service, fire, rescue and law enforcement services to their citizens; and

**WHEREAS**, the parties within their respective jurisdictions may incur costs for the purchase or lease, installation and maintenance of equipment necessary for the establishment of an enhanced 911 communications system at public safety answering points, and

**WHEREAS**, the parties may pay such costs through disbursements from the enhanced 911 fund pursuant to NMSA 1978 63-9d-4 (Cum Sup 1993); and

**WHEREAS**, in order to improve emergency communications among public safety agencies, the Communications Center and citizens of our community it is in the best interests of the City and County to participate in a jointly combined, operated, administered and maintained regional emergency communications center; and

**WHEREAS**, the parties recognize that a jointly operated regional emergency communications center will be viewed favorably for the purposes of obtaining grants and additional outside funding; and

**WHEREAS**, the City and County, in accordance with and pursuant to the Joint Powers Agreement Act, NMSA 1978, 11-1-1 through 11-1-7, are undertaking to combine their Enhanced 911 emergency communications functions in order to provide efficient and effective emergency communications for the citizens of our communities and for their public safety agencies.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT:**

## **ARTICLE I**

### **ESTABLISHMENT OF REGIONAL E-911 COMMUNICATIONS CENTER**

Pursuant to the New Mexico Enhanced 911 Act, NMSA 1978, 63-9D-41 (et.Seq.) (1993) (the "Act") the Pecos Valley Regional Communications Center District (the "District") is formed as a legal entity for the express purpose of exercising the powers conferred upon local governing bodies by the Act. The District shall oversee operations of Enhanced 911 communication services within the District boundaries and act as the vehicle through which the parties receive funding pursuant to the Act. The District boundaries include all of Chaves County.

## **ARTICLE II**

### **A. CREATION OF BOARD:**

The District shall be governed by a board consisting of members from each of the participating funding agencies. The board shall be identified as the Pecos Valley Regional Communications Center Board (the "Board").

### **B. REPRESENTATIVES:**

The Board is hereby established to provide administrative oversight and direction for the District and shall advise the governing bodies of the City and County on its operation. Each Board member shall have one vote and can vote by designated proxy. The terms of each Board member shall be coincident with their respective terms of office except the at large member who shall serve at the pleasure and upon a consensus of the City and County Managers. A majority of the members shall constitute a quorum and a majority vote of a quorum present at a duly called meeting shall decide any issue. The Chair shall always be entitled to vote. The Board shall consist of the following:

1. The Police Chief of the City of Roswell.
2. The Fire Chief of the City of Roswell.
3. The City Manager of the City of Roswell.
4. The Sheriff of Chaves County.

5. The Chair of the Chaves County Fire Board.
6. The County Manager of Chaves County.
7. One member shall represent the community at-large and will be appointed by agreement of the City and County Managers.

**C. DUTIES AND POWERS OF BOARD:**

The duties of the Board shall include, but not be limited to, the following:

1. Annually elect one member in December to act as the Chairperson of the Board effective the following January.
2. As soon as possible following the first meeting of the Board, the Chairperson shall notify the Department of Finance, Local Government Division and the local exchange telephone company(s) providing local exchange service to the 911 service area within the District boundaries regarding the cost to the Board to purchase, lease, install and maintain necessary Enhanced 911 services pursuant to 63-9D-5 of the Act.
3. Hire, fire and provide direction to the Director of the District on matters of policy and budget, but with the express limitation that the Board shall not be directly responsible for or empowered to make any personnel decisions other than the hiring and firing of the Director.
4. Conduct periodic meetings with staff to receive reports and provide guidance and direction to the Director.
5. Review revenue and expenses and approve an annual budget for the operation of the District, which shall be submitted for approval to the City and County as directed each year.
6. Ensure proper management and control over the budget and finances of the District.
7. Describe in writing the duties and responsibilities of the Director, and that ensure such description as provided by the City Human Resources Department accurately reflects the expectations of the Board.
8. Perform an annual performance review of the Director and other periodic reviews as needed.
9. Approve standard operating procedures and policies as developed by the Director for the operation of the District.
10. Approve and submit quarterly reports prepared by the Director to the governing bodies of the City and County.
11. Create and appoint by resolution such committees as it deems necessary.
12. Adopt procedural rules of order for Board meetings and meetings of any committees under the Board according to Art. II, Sec. D(4).
13. Adopt and comply with an annual Open Meetings Act Resolution.
14. Coordinate compliance through the Director and either City or County Clerks, as applicable, of any Public Records Request.
15. Establish, budget for and acquire insurance in amounts and with coverage appropriate to the risks assumed by the Board and District in their operations to the extent not provided for by either the City or the County.



16. Establish appropriate personnel and procurement policies to safeguard the rights of employees and assets.
17. Coordinate compliance with and take all requisite actions pursuant to the Act.

**D. MEETINGS:**

1. The Board shall meet regularly but no less than quarterly. In addition, the Board may also meet at the call of any Board member, subject to the Chairperson's objection, upon proper notice and in compliance with the Board's duly adopted Open Meetings Act resolution.
2. The Board shall cause minutes of all meetings to be kept and shall provide copies of said meeting minutes to both City and County Clerks for retention as public records.
3. All Board meetings shall be held in accordance with the New Mexico Open Meetings Act.
4. Board meetings shall be conducted according to the procedural rules of order as adopted by the City unless otherwise modified by this Board.

**E. LIMITATION TO POWERS OF THE BOARD:**

1. The Board shall not be involved in the day-to-day management of the District except as outlined above and shall only have such powers as have been expressly delegated by the City and County pursuant to this agreement, along with such incidental powers as may be reasonably necessary to effectuate the purpose and intent of this Agreement.

**ARTICLE III**

**ORGANIZATION OF THE DISTRICT**

**A. DISTRICT DIRECTOR:**

The duties of the Director of the District shall include, but not be limited to, the following:

1. Maintaining a liaison with all agencies utilizing the communications center.
2. Reporting to the Board on matters related to management and finances, including the budget, operations and equipment associated with the operation of the District.
3. Preparing an annual budget and submitting it to the Board for approval prior to submission to City and County governing bodies for approval.

4. Delegating and performing the preceding and such other functions as may be reasonably necessary for the implementations of the purposes of this Agreement.
5. Planning, directing and managing the activities of the District.
6. Assigning, scheduling and supervising District employees.
7. Reporting to the Board on matters related to management and finances, including the budget, operations and equipment associated with the operation of the District.
8. Acting as the Central purchasing Officer for the District at such time as the District elects to employ its own financial officers.
9. Delegating and performing the preceding and such other functions as may be reasonably necessary for the implementation of the purposes of this Agreement.

**B. DISTRICT PERSONNEL:**

All personnel employed at the District will be City employees subject to the City's policies and procedures, including hiring, termination, discipline, and training. The dispatchers will be cross-trained and assigned to dispatch for both the City and the County. The Director shall also be subject to the direction and supervision of the Board, pursuant to Art. II, Sec. C(3), and serves at the discretion of the Board.

## **ARTICLE IV**

### **FINANCING OF THE DISTRICT**

**A. FISCAL AGENT:**

The City shall act as the Fiscal Agent for the District and shall collect all revenues accruing to, make all disbursements for and be responsible for financial reports pertaining to the operations of the District until such time as the District has a self-supporting finance department and staff.

**B. FINANCIAL RESPONSIBILITY OF CITY AND COUNTY:**

1. The City shall be responsible for sixty-percent of the total cost of employing the District personnel, including sixty-percent of the cost of employing the Director, and the County shall be responsible for forty-percent.
2. In the event that the continued operations of the District require additional capital expenditures, it is herein agreed that each party shall pay an equal share of any upfront costs required.
3. The County shall provide space to house the Center without cost to the District. The City shall provide fiscal agent services to the District without cost.
4. It is the intention of the parties to pool all financial resources garnered from the State of New Mexico and any and all such other funding or

grant agencies including but not limited to disbursements from the enhanced 911 fund as may make contributions to the cost or expense of operations other than the parties themselves including, but not limited to disbursements from the enhanced 911 fund. Such funds are to be the property of the District itself and neither party shall be entitled to a credit, offset, deduction or other compensation for said funds regardless of who solicited, applied for, sought or obtained said funding.

5. The estimated operating expense budget shall be prepared by the Board and the Director and submitted annually to the City and the County, and shall be totally dependent upon the allocations made by the City Council and the County Commission (and may be less than the amount requested).

**C. SHARED FINANCIAL RESPONSIBILITY FOR DIRECTOR'S SALARY:**

The City and County agree to each be responsible for an equitable share of the Director's salary as set forth in Art. IV, Sec. B(1).

**D. ACCOUNTABILITY OF FUNDS:**

As long as the City is Fiscal Agent, it shall be strictly accountable for all funds disbursed pursuant to this Agreement and shall maintain appropriate records thereafter as prescribed by law.

**E. NATIONAL CRIME INFORMATION CENTER AND NEW MEXICO CRIME INFORMATION CENTER:**

The National Crime Information Center (NCIC) and the New Mexico Crime Information (NMCIC) functions will be provided by the District.

**F. MULTIPLE STREET ADDRESS GUIDE:**

The District shall be responsible for maintaining, updating and providing the necessary information to the telephone company as needed to maintain an accurate Street Address Guide for both the City and County to the extent this is not done by the County.

## **ARTICLE V**

### **TERMS OF AGREEMENT**

**A. TERM:**

This Agreement shall not become effective until approved by the Secretary of the New Mexico Department of Finance and Administration. The term of this Agreement shall be indefinite unless terminated as hereinafter provided.

**B. TERMINATION:**

This Agreement may be terminated by either party upon delivery of a written notice to the other party at least 180 days prior to the intended date of termination. By such termination, either party may not nullify or avoid any obligations required to have been performed prior to termination.

**C. LIABILITY:**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, section 41-4-1, et seq., NMSA 1978, as amended and the express immunity granted pursuant to 63-9D-10 of the Act.

**D. AMENDMENT:**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**E. GOVERNING LAW:**

This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.

**F. STATUS OF AGREEMENT; JPA ACT:**

The parties acknowledge and agree that this Agreement constitutes an "agreement": as that term is used in the New Mexico Joint Power Agreements Act, Section 11-1-1 through 11-1-7 NMSA 1978 (the "JPA Act").

**G. ACCOUNTABILITY:**

During the term of this Agreement and for a period of three years thereafter, each of the parties will maintain accurate and complete records of all disbursements made and monies received by each under this Agreement and, upon receipt of reasonable written request, each shall make such records available to the other party and to the public, including any federal, state or local authority during regular business hours.

**H. DISTRIBUTION OF RESIDUAL PROPERTY:**

At the end of the term, the parties will distribute and dispose of all property acquired in connection with this Agreement. If any property is acquired in connection with this Agreement, the division or distribution of which is not specifically provided for in this Agreement, then such property shall be distributed to the party that acquired it; or if the property was acquired by more than one party, the property shall be distributed

to each party in accordance with the party's pro rata share of acquisition and maintenance costs, if any, unless otherwise agreed by the parties.

**I. CONFORMITY WITH JPA ACT:**

The parties intend that this Agreement conform in all respects with the JPA Act: and that this agreement shall be construed and enforced in conformity with the JPA Act. In case of any inconsistency between this Agreement and the JPA Act, the provision of the JPA Act shall control and this Agreement shall be deemed amended so that such controlling provision of the JPA Act are incorporated into and made part of this Agreement, and any inconsistent provision of this Agreement are deleted as and to the extent of the inconsistency.

**J. ALTERNATIVE DISPUTE RESOLUTION:**

The parties agree that in the event the terms and conditions of this Agreement are disputed, including but not limited to all financial calculations, expenditures, bills and related matters, the parties will attempt to resolve the dispute through mediation and in the event the mediation fails will agree to binding arbitration.

**IN WITNESS WHEREOF** the parties have executed this Agreement as the dates documented below:

**CITY OF ROSWELL:**

**CHAVES COUNTY:**

\_\_\_\_\_  
**DENNIS KINTIGH, MAYOR**

\_\_\_\_\_  
**ROBERT CORN, CHAIR**  
**CHAVES COUNTY COMMISSION**

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**SHARON COLL**  
**CITY CLERK**

\_\_\_\_\_  
**DAVE KUNKO**  
**COUNTY CLERK**

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**AARON HOLLOMAN**  
**CITY ATTORNEY**

\_\_\_\_\_  
**STAN RIGGS**  
**COUNTY ATTORNEY**

**THIS AGREEMENT HAS BEEN APPROVED BY:**

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DRAFT



## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion and possible recommendation of approval of Agreement with the SE New Mexico Economic Development District/COG for FY 2017-18.

#### **BACKGROUND:**

This is an annual agreement between the City of Roswell and the SE New Mexico Economic Development District/COG. The SNMEDD/COG helps to coordinate the activities of the District membership with State entities, as well as assist in economic development actions.

#### **FINANCIAL CONSIDERATION:**

The annual fee is \$13,500 which has been budgeted.

#### **LEGAL REVIEW:**

The City Attorney has reviewed the agreement.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on Thursday, May 25, 2017

#### **STAFF RECOMMENDATION:**

Discussion and possible recommendation of approval of Agreement with the SE New Mexico Economic Development District/COG for FY 2017-18.

## **AGREEMENT:**

This Agreement, entered into by and between the Southeast New Mexico Economic Development District/COG (hereinafter known as the "District") and the City of Roswell, a member of said District (hereinafter known as the "Member") is as follows:

**I. The District agrees to provide the following services to the Member upon request and final approval of the District budget:**

- A. Undertake studies, collect data and develop regional plans and programs pertaining to such subjects as human and natural resource development, community facilities and the general improvement of living and working environments.
- B. Furnish technical and management assistance in the development of planning activities.
- C. Coordinate local planning with that of other Members of the District and the State.
- D. Assist in community and economic development, transportation and public works projects.
- E. Assist member governments with their legislative activities.
- F. Assist in the preparation of applications for funding under various state, federal and private grant programs. Contracts for administration may be entered into between Member and District if Member requires or desires District to administrate project.
- G. Provide a Comprehensive Economic Development Strategy at the direction of the Board.
- H. Engage in such other activities as are necessary to improve area development and address regional problems.

**II. The Member agrees to the following:**

- A. To remain an active member of the District.
- B. To make an annual contribution of \$ 13,500.00 to the District as recognition of active membership.

Entered into this 8<sup>th</sup> day of June, 2017.

Attest:

\_\_\_\_\_  
Sharon Coll, City Clerk

\_\_\_\_\_  
Dennis Kintigh, Mayor

Attest:

Southeastern New Mexico  
Economic Development District /COG

\_\_\_\_\_  
Secretary  
Dora Batista, Secretary

\_\_\_\_\_  
President  
Dave Venable, President





## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion and possible recommendation of approval of a lease agreement with the Roswell Hispano Chamber of Commerce.

#### **BACKGROUND:**

Staff is proposing approving a lease agreement with the Roswell Hispano Chamber of Commerce located at 327 N. Main Street. The proposed agreement includes 4 possible extensions and the inclusion of an annual CPI adjustment for the rent.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request.

#### **LEGAL REVIEW:**

The City Attorney has reviewed the lease agreement.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on Thursday, May 25, 2017

#### **STAFF RECOMMENDATION:**

Discussion and possible recommendation of approval of a lease agreement with the Roswell Hispano Chamber of Commerce.

**AN AGREEMENT BETWEEN THE CITY OF ROSWELL AND  
THE ROSWELL HISPANO CHAMBER OF COMMERCE  
FOR LEASE OF A PORTION OF THE FISK BUILDING**

THIS AGREEMENT is made this 8<sup>th</sup> day of June, 2017, by and between the City of Roswell, a political subdivision of the State of New Mexico, herein referred to as "Lessor" and the Roswell Hispano Chamber of Commerce, hereinafter referred to as "Lessee".

**WHEREAS**, Lessor is the owner of certain property located in Roswell, New Mexico, known as the Fisk Building, which is located at 100 East Fourth Street, Roswell, New Mexico, in which are located certain office suites and spaces; and

**WHEREAS**, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the office space constituting a portion of the Fisk Building, identified as approximately 910 square feet of the Northwest corner of the first floor (the "Premises"), upon the terms and conditions set forth herein.

**NOW THEREFORE**, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and agreements set forth herein, the parties do hereby agree as follows:

1. **LEASE.** Lessor does hereby lease to Lessee and Lessee hereby leases from Lessor the Premises.
2. **TERM.** Lessee, subject to its faithful performance of its duties as set forth in this Agreement, shall occupy a portion of the premises beginning on July 1, 2017 for term of four years, with one four-year extension upon the mutual written agreement of the parties.
3. **RENT.** The lease amount shall be paid in monthly installments of Three Hundred Fifty Dollars (\$350.00) each, which sum shall be paid on the first day of each month during the term of this Lease. Lessee may prepay any installment or installments of rent at any time provided, however, that such prepayment shall not be in excess of six (6) months annual rental without the prior written consent of Lessor. All rentals required by the terms of this Lease shall be paid in lawful money of the United States or by check or draft of the Lessee, or someone acting for the Lessee, redeemable in lawful money of the United States, and shall be paid to The City of Roswell, 425 N. Richardson, Roswell, NM 88202-1772 (check shall reference property), or at such other address as Lessor may from time to time furnish Lessee for this purpose. Upon approval of every lease extension, the lease amount shall be increased by the appropriate Consumer Price Index (CPI).
4. **USE OF PREMISES.** Lessee covenants and agrees that it will use and occupy the Premises only as an office, and for no other purpose without having first obtained the written consent of the Lessor. In the event Lessee fails to utilize and occupy the Premises as an office without having first obtained the written consent of Lessor, Lessor shall have the option to terminate this Lease, and to re-enter the Premises as hereinafter set forth. Notwithstanding anything contained herein to the contrary, in no event shall the Lessee use the Premises in any way which will increase the risks covered by insurance on the Premises and result in a cancellation of any insurance required to be obtained by this Agreement, even if such a use would otherwise be in furtherance of Lessee's business purposes.

Lessee, at its expense, shall conform with and comply with all applicable regulations, ordinances and laws relating to the use and occupancy of the Premises.
5. **WASTE, NUISANCE OR UNLAWFUL ACTIVITY.** Lessee shall not allow waste or nuisance on the Premises, or use or allow the Premises to be used for any unlawful activity. Lessee shall see that all persons coming on to the Premises shall use the Premises in an orderly courteous, and safe manner, with due regard of the rights of others who may be using the Premises.
7. **UTILITIES.** Lessor shall pay for the following utilities serving the Premises during the term of this Lease: electricity, gas, and water. Lessee shall be responsible for

all telephone expenses. All payments shall be made by the Lessee directly to the utility company furnishing such service, so that neither the Lessor nor the Premises shall be or become liable for any such rate, rentals or charges.

6. **REPAIRS AND MAINTENANCE.** During the term of this Lease and all renewals thereof, Lessee shall make, at its own expense, all repairs needed to maintain the Premises in good condition and repair, including such repairs, alterations and maintenance as may be necessary to impede normal wear and tear, or as may be necessary in order that the Premises, including the improvement or fixtures thereon, shall conform to the lawful requirements, laws, ordinances, directions of proper public authorities, and the requirements of all policies of insurance in force relating to the Premises, except those repairs and maintenance which are the responsibility of Lessor. Lessee shall indemnify, defend and save lessor free and harmless from any claim, penalty, or damage or charge imposed for the violation of such laws, ordinances, rules and regulations, whether occasioned by the neglect of Lessee, or any agent or person in the employ of Lessee, or any person contracting with Lessee.

Lessor will be responsible for outside of the building, roof, glass, cooling and heating systems, electrical, plumbing, external doors, outdoor security lighting, and will reasonably maintain the same.

7. **LIABILITY OF LESSEE.** Lessee agrees to defend, indemnify and save Lessor harmless against any and all loss, damage, claim or expense arising out of the use of the Premises by Lessee, its agents, employees, invitees or trespassers, or out of any accident or other occurrence arising out of the use of the Premises, causing injury to any person whomsoever, or property whatsoever, due directly or indirectly to the use of the Premises or any part thereof by Lessee, its agents, employees, customers, patrons or other persons using the leased Premises.

Lessor shall not be liable to Lessee or any person for any damage or injury arising out of the use of the Premises by Lessee to any person or property occasioned by Lessee's use. Lessee agrees and covenants to defend, indemnify and save harmless Lessor from all such liability and expense in connection with Lessee's use of the Premises.

8. **LESSOR'S ACCESS TO THE PREMISES.** Lessor, its agents or employees, shall have the right to enter the Premises during normal business hours to inspect said Premises. Notwithstanding anything contained herein, Lessor shall have no duty whatsoever to make any inspection, and lessor shall not be held liable for any failure to discover, observe, or remedy any defects on or about the Premises. Lessor shall inspect the Premises with Lessee at the beginning of this Lease.

9. **ALTERATIONS OR ADDITIONS.** Lessee cannot alter and/or modify the Premises, including the internal structures, installations and improvements located upon the Premises without prior written consent of the Lessor. Any construction and/or alteration of the Premises shall be done in a good and workmanlike manner and in conformity with all applicable laws, ordinance, restrictions and regulations. Notwithstanding anything contained herein to the contrary, Lessee may make only those changes to the improvements which do not constitute a material change in the structure and which do not impair the quality, lessen the utility, or decrease the value of the Premises. At the termination of the Lease, all alterations and modifications shall become the property of the Lessor.

10. **MECHANIC'S AND MATERIALMEN'S LIENS.** No liens of any mechanic, materialman, laborer, architect, artisan, contractor, subcontractor or any other lien of any kind whatsoever, shall be created against or imposed upon the Premises, or any part thereof.

11. **INSURANCE.** At all times during the term of this Lease, and any renewal or extension thereof, Lessee will, at its sole cost and expense, and as additional rent hereunder procure and maintain, with insurers authorized to do business in the State of New Mexico and which are of generally recognized responsibility and acceptable to lessor the following insurance coverages:

- A. A policy of public liability insurance covering bodily injury and property damage liability. Said public liability insurance shall be provided by one of the following methods:
- (1) Lessee shall secure an endorsement to its own comprehensive general liability insurance policy, including Lessor as a named insured therein, insofar as such policy covers the Premises, which policy shall provide not less than coverage than the New Mexico Tort Claims Act specifies.
  - (2) Lessee shall secure an owner's, landlord's and tenant's protective liability policy, or other appropriate type of policy covering the Premises and Lessor and Lessee, with the same limits and coverage as set out in Paragraph 13A above.
- B. All insurance required by this section shall be effected under valid and enforceable policies upon the commencement of the term hereof, and Lessee shall deliver to Lessor true and correct copies of the insurance policy or policies required. All policies must state that "The City of Roswell" is a named insured.
- C. All of such policies shall provide that Lessor shall receive not less than ten (10) days notice prior to any cancellation, material change, in terms of coverage, or reduction of the coverage evidence by such policy or policies of insurance.
12. **DAMAGE OR DESTRUCTION.** In the event the Premises, or any portion thereof, is damaged beyond safe use or destroyed by any cause whatsoever, including but not limited to acts of God, this Lease shall terminate.
13. **CONDITIONS OF DEFAULT, REMEDIES OF LESSOR; SECURITY FOR PERFORMANCE.** If at any time during the term of this Lease or any renewal or extension thereof, Lessee shall:
- A. Default in the payment of any fixed monthly rent or any other sums specifically to be paid by Lessee hereunder and such default shall not have been cured within ten (10) days after written notice has been given to Lessee specifying that such payment is due; or
  - B. Default in the observance or performance of any of the Lessee's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Lessee, and such default shall not have been cured within fifteen (15) working days after Lessor shall have given Lessee written notice thereof specifying such default; provided, however, that if the default complained of shall be of such nature that the same cannot be completely remedied, or cured within such fifteen (15) day period, then such default shall not be an enforceable default against Lessee for the purposes of this paragraph if Lessee shall have commenced curing such default within such fifteen (15) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of.

Then, in any such event, Lessee shall be in default under the terms of this Lease and Lessor shall have the following remedies:

- A. Lessor may sue to collect any and all sums which may accrue to Lessor by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease.
- B. Lessor may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease.
- C. Lessor may, without further notice to Lessee and without demand for rent due or for the observance or performance of any of said terms, conditions or agreements, terminate this Lease, re-enter the Premises and remove all persons and property therefrom, using such force as may be necessary.

- D. If Lessee shall at any time be in default in fulfilling any of the covenants of this Lease, Lessor may, but shall not be obligated so to do, and without notice to or demand upon Lessee, take or cause to be taken such action or made such payment as may be required by such covenant, at Lessee's risk and expense, and all expenses, costs, and liabilities of Lessor incurred in accordance with the terms of this paragraph shall be deemed additional rental hereunder, and shall be paid to Lessor on demand, together with interest at the rate of 15% annum.
- E. The remedies of Lessor hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Lessor may be entitled in law or in equity. The failure of Lessor to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment of the future of such or any other covenant or option, nor shall the receipt by lessor of rent with knowledge of any default by Lessee, or any other action of Lessor except a waiver expressed in writing signed by Lessor, be deemed a waiver of such default, nor shall the acceptance of Lessor of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof, nor absolve Lessee from its obligation to pay the full rental provided herein. The acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

**14. ASSIGNMENTS, LEASES AND SUBLEASES.** Lessee shall not assign any interest under the terms of this Lease or sublease the premises without the prior written consent of Lessor.

- A. Before any assignment of the Lease shall become effective, the assignee shall in writing assume and agree to be bound by all the covenants, agreements, terms and conditions of this Lease. No assignment, sublease, or transfer of interest in whole or in part made by Lessee or any subsequent assignee or transferee in interest shall operate to discharge or abate any obligation hereunder made or hereafter assumed by Lessee or any assignee or sublessee or transferee. The parties to this lease hereby understand and agree that the Southeastern New Mexico Minorities Foundation will utilize office space as a part of this lease and shall not be considered a sublessee.
- B. A consent by Lessor to one assignment shall in no event be a consent to a subsequent assignment, sublease, or occupation by other persons.
- C. Any unauthorized assignment or sublease shall, at the option of Lessor, be void and shall terminate the Lease. In addition, the Lessor shall be entitled to all compensation paid to Lessee by the Sublessee.

**15. SURRENDER.** Lessee covenants and agrees to deliver up and surrender possession of the Premises to Lessor at the termination of this lease, by expiration of the term or otherwise, in as good condition and repair as the same shall be at the commencement of this lease, and in as good condition and repair as shall be required of Lessee during the term hereof, excepting only natural wear and decay which cannot reasonably be arrested by regular repair and maintenance.

**16. OWNERSHIP OF BUILDING, STRUCTURES AND OTHER IMPROVEMENTS.** All buildings, structures, installations and other permanent structural improvements presently existing or which may hereafter be erected or placed upon the Premises, whether by Lessor or Lessee, shall be and remain the property of Lessor, and Lessor shall derive all benefits of such ownership, including all benefits accruing to Lessor by law from depreciation thereof.

**17. SUMS DUE LESSOR A LIEN.** Subject to the other provision contained in this Lease Agreement, all sums which shall become due to Lessor on account of any provision whatsoever of this lease are and shall always constitute a valid lien upon

any and all goods, chattels and other property belonging to the Lessee and located upon the Premises.

18. **NOTICES.** At any notice provided for herein shall be sufficiently given if served personally or if deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party to whom the notice is to be served. If either the Lessor or Lessee shall at any time change its name, or if there be an assignment or other disposition of lease rights by either party, or if either party changes the place of address to which such notice or communication shall be sent, written notice of such communication shall be given to the other party. Until further notice in writing is served, any notice or communication with reference to this Lease Agreement addressed to Lessor may be addressed to The City Manager, 425 N. Richardson, Roswell, NM 88201, and any such notices or communication addressed to Lessee may be addressed to Roswell Hispano Chamber of Commerce, 327 N. Main Street, Roswell, NM 88201. Notices given as provided herein shall be deemed effectively given as of the date of personal delivery or as of the third business day following the date of deposit of same for mailing in the United States Post Office.
19. **COVENANTS RUN TO SUCCESSORS, ASSIGNS, ETC.** It is agreed that all covenants, conditions, agreements and undertakings in this lease shall extend to and be binding upon the parties hereto, and their heirs, successors, personal representatives and assigns.
20. **ENTIRE AGREEMENT.** The parties hereto agree that this Lease incorporates all of the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and that all covenants, agreements and understandings have been merged into this Lease. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable.
21. **INVALIDITY OF PARTICULAR PROVISIONS.** If any term or provision of this Lease or the application thereof to any person or circumstances shall be held invalid or unenforceable, the remainder of this Lease or the application of such term or provision to other persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby. Each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
22. **AMENDMENTS.** The parties hereto agree that this Lease agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.
23. **TITLES FOR CONVENIENCE ONLY.** The titles assigned to the foregoing provisions are assigned solely for the purpose of convenience. The substantive matters contained in the provisions of this Lease shall take precedence over the titles describing the same should a conflict arise between the two.
24. **TIME OF ESSENCE.** Time shall be of the essence in the performance by the parties of all the terms, conditions and provisions herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Lease agreement as of the date first written above.

**LESSOR: City of Roswell**

\_\_\_\_\_  
**Joe Neeb**, City Manager

\_\_\_\_\_  
Date:

**Attest:**

\_\_\_\_\_  
**Sharon Coll**, City Clerk

\_\_\_\_\_  
Date:

**LESSEE: Roswell Hispano Chamber of Commerce**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date:



## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion and possible recommendation of approval of a lease agreement with the Historical Society For Southeastern New Mexico.

#### **BACKGROUND:**

Staff is proposing approving a lease agreement with the Historical Society For Southeastern New Mexico located at 200 North Lea Avenue. The proposed agreement includes 3 possible lease extensions. In addition, based on the services provided by the Historical Society to the City, rent has been ameliorated for this location.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request.

#### **LEGAL REVIEW:**

The City Attorney has reviewed the lease agreement.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on Thursday, May 25, 2017

#### **STAFF RECOMMENDATION:**

Discussion and possible recommendation of approval of a lease agreement with the Historical Society For Southeastern New Mexico.



## LEASE AND SERVICE AGREEMENT

**THIS AGREEMENT**, made and entered into this 8<sup>th</sup> day of June, 2017, by and between the **CITY OF ROSWELL, NEW MEXICO**, a municipal corporation, hereinafter called Lessor, and the **HISTORICAL SOCIETY for SOUTHEASTERN NEW MEXICO**, a New Mexico nonprofit corporation, hereinafter called Lessee.

**WHEREAS**, Lessor has title to and has the right to utilize, including the right to lease the following described real property, together with the improvements thereon, in Chaves County, New Mexico, to-wit:

208 North Lea Ave., Roswell, New Mexico;

Lot 1, Historical Foundation, Inc., Summary Re-plat of Lots 1, 2, & 3, Block 19, West Side Addition to the City of Roswell, Chaves County, New Mexico as filed for record January 12, 1998, and recorded in Plat Book T, Page 40, of Plat Records in the Office of the County Clerk of Chaves County, New Mexico.

In addition, desires to lease the above-described property to the Lessee upon the terms and conditions hereinafter recited and entering into a Lease Agreement governing the same, subject to the conditions listed below.

- 1. Term:** the Lessor does hereby lease to the Lessee the above described property and improvements thereon for a term of one (1) year, commencing on July 1, 2017, and ending on June 31, 2018, with an option to renew this Lease Agreement for three (3) additional one (1) year terms upon mutual agreement of Lessor and Lessee. Lessor reserves the right to re-negotiate the terms of "Consideration" for the renewal period
- 2. Rent:** The parties find and agree that the value of the use of the building to the Lessee and the value of the services provided by the Lessee to Lessor in operating the building for the benefit of the citizens of Roswell, Chaves County and the State of New Mexico are substantially equal in value (see Exhibit "A", attached hereto and made a part of this Agreement). In lieu of monetary rent paid to the Lessor by Lessee, Lessee agrees to provide services and benefits as set-forth in Exhibit at no cost to the Lessor. Conditions of Consideration (at no cost to the City) to include:

  - A. The Archives building shall maintain the following hours of operation and staffing: Four (4) day per week 1:00 p.m. until 4:00 p.m. and by appointment.
  - B. The staff shall assist the public, businesses, and state agencies, such as but not limited to, Department of Tourism and the State Film Commission. There shall be no charge for assistance related to any proposed and/or existing economic development projects. The Historical Museum shall establish and publish a "charge sheet" for duplication services reflecting a

minimal cost for reproduction of archived documents. These fees shall not exceed fair market rates for such activities, subject to applicable copyright laws.

- C. Unlimited use of not less than thirty (30) parking spaces located in the museum parking lot (between the Museum and Archives building).
- D. Maintenance of the grounds, to include, but not limited to: landscaping, mowing, fertilization, watering, sprinkler system maintenance/repair, trimming/pruning of trees and shrubs.
- E. Maintain service/safety agreement with a certified elevator-servicing contractor.
- F. Provide meeting accommodations for City committee, staff, Public Hearings and other City sponsored events, based on a minimum of eight (8) hours per month.

**3. Condition of Premises:** Lessee accepts the leased premises in its present condition. Lessee agrees that it has inspected the above described property and all improvements located thereon and receiving same in good repair and condition; and that the expiration of the term hereof, Lessee agrees to yield up and deliver the leased premises to Lessor in as good repair and condition as when entered upon with the exception of normal and reasonable wear and tear.

Lessee accepts responsibility and City Standards for the maintenance and upkeep grounds/facilities assigned. Lessee agrees to make a continuous effort to: 1) keep the assigned area clean and policed at all times; 2) assigned area having trees! Shrubbery/grass to be kept irrigated and trimmed as necessary and 3) to make necessary corrections!-adjustments to maintenance practices as inspections determine.

**4. Maintenance:** Lessee shall maintain the above described property and improvement thereon in a clean and orderly condition and shall maintain and replace when necessary, all plumbing, electrical wiring, dedicated computer circuits to include coaxial cables, glass, mechanical, including elevator services and other similar fixtures or equipment located on or in any portion of the above-described property, buildings located thereon at Lessee's expense. Lessor shall be the sole judge of the quality of maintenance, and upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance is deemed necessary. If Lessee does not undertake required maintenance within ten (10) days after receipt of written notice, Lessor shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee. It is mutually agreed that expenses for major structural repairs will be paid jointly (50% each) by the Lessee and Lessor.

**5. Taxes, Licenses and Utilities:** During the term hereof, Lessee shall pay all licenses, charges, fees or assessments levied or to be levied upon personal property, fixtures or equipment by Lessee upon said premises, accrued or accruing of whatsoever kind or nature, incident to or arising out of conduct of Lessee's business.

**6. Improvements:** Lessor grants to Lessee the privilege to construct whatever buildings, facilities or improvements in and upon the premises as Lessee deems necessary, provided the Lessee obtains written authorization from Lessor, prior to initiating construction. The cost of any or buildings, facilities, or improvements shall be borne solely by Lessee, and Lessee shall not permit an encumbrance, or claim to be made, filed, or levied against the premises or against any buildings, facilities or improvements constructed by Lessee or at Lessee's request; provided, however, if during the term of this Lease any renewal or extension thereof, any mechanics, material-men's or other lien shall be filed against the premises or against any of the improvements thereon by reason of or arising out of any labor or material furnished or alleged to have been furnished to or for Lessee at the premises, or for by reason of any addition, substitution, rearrangement, remodeling or alteration of the improvements on the premises made by Lessee, or against Lessor as owner thereof when such labor or material shall have been ordered by Lessee, Lessee shall defend for Lessor at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of the same, and shall pay any damage and satisfy and discharge any judgment entered therein and save Lessor harmless from any claim or damage resulting there from. Lessor will deliver to Lessee copies of any notice, affidavits, or summons it may receive with respect to the foregoing.

Except as otherwise provided herein, Lessee shall have the right to install such fixtures and equipment as may be necessary for the conduct of its community services activities and at the expiration of term hereof, such fixtures and equipment installed by the Lessee shall become part of the permanent structure. Fixtures and equipment purchased with or in conjunction with federal or state funds, shall be considered property of the City of Roswell; and 2) Lessee shall not make, suffer or permit to be made, any major additions, alterations or improvements on the premises without first obtaining the written consent of Lessor, in the event the consent is given and Lessee makes any major alterations, additions or improvements such work shall be done in such a manner that no mechanic's lien, material-man's lien or other lien of any kind shall be created against or imposed upon the premises or any part thereof. Lessee shall indemnify and hold harmless the Lessor and Lessor's employees from any and all liability and claims for damage of any kind and nature which may be made or accrue against Lessee on account of any such major alterations, additions, or improvements. Improvements and/or equipment made or installed by Lessee shall become property of the Lessor, and the value thereof will not be offset against any amounts claimed by the Lessor as owed: under the terms of this Lease.

**7. Insurance:** During the term hereof, Lessee, at its sole cost and expense shall:

- A. Keep the above-described property and all buildings, fixtures, and equipment located thereon or therein insured against loss by fire, lightning, and extended coverage, in an amount not less than One Hundred Percent (100%) of the building replacement value, with a loss payable clause in favor of Lessor and Lessee, as their interest may appear. The Lessee, at its option, may insure the property under the Lessors blanket policy by reimbursing the Lessor the cost thereof on or before the first day of each "lease/agreement" year.
- B. Maintain in full force and effect a \$1,000,000.00 policy or policies of general public liability insurance in which Lessor is named as an insured, covering against claims for injury, death or damage to person(s) or property occurring upon, in or about the premises, such limits may reasonably be amended by the Lessor from time to time, but not less than the maximum specified by the New Mexico Tort Claims Act.
- C. Lessee is responsible for insurance on contents and equipment, if any.
- D. Lessee shall provide Lessor an annual copy of the Certificate of Insurance.

**8. Damage or Destruction of Premises:** if at any time during the term hereof any of the buildings upon the property described above are damaged or destroyed by fire, the elements, or other cause, Lessor shall have the sole option to rebuild or not to rebuild the building. In the event Lessor does not rebuild, Lease is deemed cancelled.

**9. Liability:** Lessor and or Lessor's employees shall not be liable to Lessee or to Lessee's employees, customers, visitors or any other person for any injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the premises in connection with, or arising out of Lessee's operations and use the premises, and Lessee agrees to indemnify and hold harmless Lessor for any claim for damage which may occur in any manner in or about the premises.

**10. Default:** The following events shall be deemed a default for purposes of this agreement:

- A. Failure to Provide Consideration: If Lessee fails to provide consideration in the time and manner provided herein, or if Lessee defaults in any of the covenants of promises to be performed by it, then at its option the Lessor may give the Lessee written notice setting out such default and if Lessee fails to cure said default within ten days after receiving said notice, then at its option, Lessor may use any remedy or remedies provided by law or equity, including but not limited to the following:

1. Lessor may declare this Lease terminated and enter upon the leased premises or any part thereof, with or without process of law, and repossess said premises.
  2. Lessor may reenter the leased premises and may rent the same on behalf of Lessee under such terms as are reasonable to Lessor, as Lessor may obtain using reasonable and bona fide efforts, all without releasing Lessee from any liability hereunder. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the premises in a rentable condition and next to the payment of the rent or any sum due the Lessor hereunder and the Lessee shall remain liable for any deficiency.
- B. Lessor does not hereby waive any statutory rights, liens or remedies that may be available to Lessor in the event of Lessee's failure to pay rent or other default by Lessee. The Lessor agrees however, to make a good faith negotiation with Lessee, concerning subordination of Lessor's lien provided herein in favor of financing institutions advancing money to Lessee for the conduct of its business und any bona fide loan agreement. Such subordination shall not be mandatory.
- C. Lessee shall pay Lessor all reasonable attorney's fees, costs and expenses that may arise from enforcing any of the terms of this Lease. If Lessor waives any provisions hereof of any default by the Lessee then the same shall not constitute a waiver by the Lessor of any other subsequent breach or default.

**11. Bankruptcy:** if Lessee should be adjudged bankrupt, either voluntarily or involuntarily, Lessor shall have the option to forthwith terminate this Lease and reenter the leased premises and take possession thereof and in no event shall this Lease be deemed an asset of the Lessee after adjudication in bankruptcy.

**12. Use of the Premises:**

- A. Lessee shall use the leased premises solely for the purpose of conducting and operating activities necessary to storage and preservation of historical archives for Southeast New Mexico, together with such other official activities and related uses as shall may reasonably be an accessory thereto, and for no other purposes. Lessee shall not use, nor permit the use of, the lease premises for any purpose prohibited by the laws of the United States, the State of New Mexico, or the Ordinances of the City of Roswell.
- B. Lessee shall conduct and operate its activities in such a manner so as to prevent performance of any act or creation or maintenance of anything which in the opinion of the Lessor may be or become a nuisance or

otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to effect the surrounding area of adjoining premises. Lessor shall be the sole judge as to whether any act done or thing created or maintained by Lessee on the leased premises is or may become a nuisance or otherwise noxious or objectionable condition, and Lessee agrees to abide by Lessors decision and act in accordance with its directions with respect thereto.

- 13. Non-Discrimination Provisions:** The Lessee for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that 1) no person on the grounds of race, color, sex, national origin, age or disabilities shall be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in the use of said facilities; 2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, national origin, age or disabilities shall be excluded from participation; and 3) that in the event of breach of any of the above nondiscrimination covenants, the City of Roswell shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.
- 14. Inspection of Premises:** Upon giving reasonable notice to Lessee, Lessor or its agents may enter upon the leased premises during Lessee's regular business hours and have free access to all building located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved under the terms and provisions of this Lease.
- 15. Assignment and Sublease:** Lessee shall not assign this Lease nor sublet the leased premises or any portion thereof without prior written consent of Lessor. In the event of such assignment or sublease, Lessee shall not thereby be relieved of and from its obligation hereunder.
- 16. Surrender of Premises:** In the event Lessor deems the property necessary for demolition or conversion to its own use, it will notify the Lessee by giving a ninety-day (90) written notice. Lessee agrees to surrender the premises not later than ninety (90) days from receiving notice from Lessor.
- 17. Paragraph Headings:** The paragraph headings contained herein are for convenience and in reference and are not to define or limit the scope of any provision of this Lease.

**18. Notices:**

- A. All notices, requests or other communications to Lessor shall be given by registered mail addressed as follows:

City Manager  
City Of Roswell  
P.O. Drawer 1838  
Roswell, NM 88202-1838

- B. All notices, requests or other communications to Lessee shall be given by registered mail addressed as follows:

ATTN: President  
Historical Society for Southeast New Mexico  
200 N. Lea Ave.  
Roswell, NM 88201

- 19. Effect:** The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

**IN WITNESS HEREOF**, this Agreement is executed on the day and year first above written.

**LESSOR: City of Roswell**

\_\_\_\_\_  
**Joe Neeb**, City Manager

\_\_\_\_\_  
Date:

**Attest:**

\_\_\_\_\_  
**Sharon Coll**, City Clerk

\_\_\_\_\_  
Date:

**LESSEE: Historical Society for Southeastern New Mexico**

\_\_\_\_\_  
President, HSFSENM

\_\_\_\_\_  
Date:

<b>Exhibit "A": Historical Museum for Southeast New Mexico – Benefits Assessment</b>				
<b>Benefits:</b>	<b>Number:</b>	<b>Rate:</b>	<b>Monthly:</b>	<b>Annually:</b>
Archive Maintenance & Preservation	1	12,000	1,000	12,000.00
Hazard Insurance	1	150.00	150.00	1,800.00
Liability Insurance	1	65.00	65.00	780.00
Grounds Maintenance	1	400.00	400.00	4,800.00
Facility Maintenance (including elevator)	1	450.00	450.00	5,400.00
Accommodations for City Meetings (4 hr. blocks 10 per month)	10	75.00	750.00	9,000.00
Annual Benefit to City				33,780.00
FMR				33,500.00
Benefit/services rcvd above FMR				280.00





## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion and possible recommendation of approval of a lease agreement with the Chaves County Flood Control.

#### **BACKGROUND:**

Staff is proposing approving a lease agreement with the Chaves County Flood Control located at 4203 West 2<sup>nd</sup> Street. The proposed agreement includes 4 possible extensions and the inclusion of an annual CPI adjustment for the rent.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request.

#### **LEGAL REVIEW:**

The City Attorney has reviewed the lease agreement.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on Thursday, May 25, 2017.

#### **STAFF RECOMMENDATION:**

Discussion and possible recommendation of approval of a lease agreement with the Chaves County Flood Control.

## **LEASE AGREEMENT**

**THIS AGREEMENT**, is made and entered into this 8<sup>th</sup> day of June, 2017 by and between the **CITY OF ROSWELL, NEW MEXICO**, a municipal corporation, hereinafter called the Lessor, and the **CHAVES COUNTY FLOOD CONTROL**, a political subdivision of the State of New Mexico, Roswell, New Mexico 88201, hereinafter called Lessee.

**WHEREAS**, Lessor has title to and has the right to utilize, including the right to lease the following described real property, together with the improvements thereon, in Chaves County, New Mexico, to wit:

A tract of land lying and being situated in the SE ¼ of Section 35, Township 10 South Range 234 East, N.M.P.M., being more particularly described as a part of the E ½ E ¼ SW ¼ SE ¼ in Section 35. Known as 4203 West Second, Roswell, New Mexico 88201, also known as 4203 W. 2<sup>nd</sup> Street,

and desires to lease the above described property to the Lessee upon the terms and conditions hereinafter recited and entering into a Lease Agreement governing the same effective July 1, 2012.

**NOW, THEREFORE**, for and in consideration of the covenants and agreements to be performed by Lessee, its successors and assigns, the Lessor does hereby lease to the Lessee, the above described property and improvements, subject to the following.

- 1. Term:** Lessee, subject to its faithful performance of its duties as set forth in this Agreement, shall occupy a portion of the premises beginning on July 1, 2017 for term of four years, with one, four-year extensions upon the mutual written agreement of the parties.
- 2. RENT:** The Lessee shall pay to the Lessor rent in the amount of One Thousand Eight Hundred Eighty-six Dollars (\$1,886.00) per year during the first two years of this Lease, payable in annual payment equal to the annual lease rate, or in monthly installments of One Hundred Fifty-Seven and 17/100 Dollars (\$157.17) per month. . Upon approval of every lease extension, the lease amount shall be increased by the appropriate Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (CPI-W). The Lessee shall be responsible for the costs of all utilities associated with the premises and all maintenance and upkeep of the property. Notwithstanding anything to the contrary, this Lease shall be without cost to the Lessor.
- 3. CONDITIONS OF PREMISES:** The Lessee accepts the leased premises in its present condition. The Lessee agrees that it has inspected the above-described property and all improvements located thereon and that it is receiving the same in good repair and condition. That the expiration of the term hereof, Lessee agrees to yield up and deliver the leased premises to Lessor in the same condition, ordinary wear and tear excepted.

The Lessee accepts responsibility and City standards for the maintenance and upkeep of the grounds/facilities assigned. The Lessee agrees to make a continuous effort to: 1) Keep the assigned area clean and policed at all times; 2) Keep assigned area having trees/shrubbery/grass irrigated and trimmed as necessary; and 3) Make necessary corrections/adjustments to maintenance practices as inspections determine.
- 4. MAINTENANCE:** The Lessee, at its sole cost and expense, shall maintain the above described property and improvements located thereon in a clean and orderly condition and shall maintain and replace when necessary, all plumbing, wiring, glass, mechanical and other similar fixtures or operating equipment located on or in any portion of the above described property and building located thereon. The Lessor shall be the sole judge of the quality of maintenance, and upon written notice by Lessor to Lessee, Lessee shall be required to perform

whatever maintenance is deemed necessary. If Lessee does not undertake said maintenance within ten (10) days after receipt of written notice, Lessor shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

**5. TAXES, LICENSES, AND UTILITIES:** During the term hereof, Lessee shall pay all taxes, licenses, utilities, charges, fees or assessments levied or to be levied upon the property, personal property, fixtures or equipment placed Lessee upon said premises, accrued or accruing of whatsoever kind of nature, incident to or arising out of the conduct of Lessee's activities.

**6. IMPROVEMENTS:** Except as otherwise provided herein, Lessee shall have the right to install such fixtures and equipment as may be necessary for the conduct of its operations and at the expiration of the term hereof, shall have the right to remove all of such fixtures and equipment installed by it that can be removed without damage to the premises. Provided, however, Lessee shall not make, suffer or permit to be made, any major additions, alterations or improvements to the premises without first obtaining the written consent of the Lessor. In the event the consent is given and Lessee makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the premises or any part thereof. Then Lessee shall indemnify and hold harmless the Lessor from any and all liability and claims for damage of any kind and nature which may be made or accrue against the Lessor on account of any such major alterations, additions, or improvements. Improvements made by it shall become the property of the Lessor as owing under the terms of this Lease.

**7. INSURANCE:** During the term hereof, Lessee, at its sole cost and expense shall:

- A. Keep the above-described property and all buildings, fixtures, and equipment located thereon or therein insured against loss by fire, lightning, and with extended coverage, in an amount not less than 100% of the building replacement value, with a loss payable clause in favor of Lessor and Lessee, as their interest may appear.
- B. Maintain in full force and effect a policy or policies of general public liability insurance, in which Lessor and Lessee are named as insured, covering against claims for injury, death, or damage to persons or property occurring upon, in or about the leased premises, in such limits as may be within the limits established by the State of New Mexico Tort Claims Act, but not less than \$1,000,000 for personal injury or death and \$50,000 for property damage.
- C. At its option, Lessee shall be responsible for insurance coverage of personal property, fixtures, office furniture, contents and equipment, if any.

**8. DAMAGE OR DESTRUCTION OF PREMISES:** If at any time during the term hereof any of the buildings upon the property described above are damaged or destroyed by fire or the elements or other cause, said building shall be promptly repaired and rebuilt and restored by and at the sole cost and expense of the Lessee after settlement is made with the insurance carrier and payment is received, to a condition as good as the same was in immediately prior to such damage or destruction, using the insurance funds provided in this Lease toward such expense and in accordance with all law, regulations, and ordinances of all governmental authorities having jurisdiction and during the time of said repair, reconstruction, or restoration. The rent herein shall not abate, except that Lessee shall receive credit against the rent for any rental payments that accrue during a period of non-occupancy, occasioned by damage or destruction of the premises, during the remainder of any specified term of this Lease.

**9. LIABILITY:** The Lessor shall not be liable to Lessee or to Lessee's employees, customers, visitors or any other person for any injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the premises in connection with, or arising out of Lessee's operations and use of the premises, and Lessee agrees to indemnify and hold the Lessor harmless from and against any and all loss, cost (including, without limitation, attorney's fees), damages, expense and liability arising therefrom. The Lessee shall defend the Lessor in any action brought against it due to any claims with respect to such damage or destruction, which may occur in any manner in or about the premises.

**10. DEFAULT:** The following events shall be deemed a default for purposes of this Agreement:

A. Failure to Pay Rent or Uphold Covenants and Promises: If Lessee fails to pay the rent in the time and manner provided herein, or if the Lessee defaults in any of the covenants or promises to be performed by it, then at its option the Lessor may give the Lessee written notice setting out such default and if Lessee fails to cure said default within ten (10) days after receiving said notice, then at its option, the Lessor may use any remedy or remedies provided by law or equity, including but not limited to the following:

1. The Lessor may declare this Lease terminated and enter upon the leased premises or any part thereof, either with or without process of law, and repossess said premises.
2. The Lessor may reenter the leased premises and may rent the same on behalf of Lessee upon such terms as are suitable to Lessor, all without releasing Lessee from any liability hereunder. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the premises in a rentable condition and next to the payment of the rent or any sum due, the Lessor hereunder and the Lessee, shall remain liable for any deficiency.

B. The Lessor does not hereby waive any statutory rights, liens, or remedies that may be available to Lessor in the event of Lessee's failure to pay rent or other default by Lessee. The Lessor agrees however, to make a good faith negotiation with the Lessee, concerning subordination of Lessor's lien provided herein in favor of financing institutions advancing money to Lessee for the conduct of its business under bona fide loan agreement. Such subordination shall not be mandatory.

C. The Lessee shall pay Lessor all reasonably attorney's fees, costs and expenses that may arise from enforcing any of the terms of this Lease. If Lessor waives any provisions hereof of any default by the Lessee, then the same shall not constitute a waiver by the Lessor of any other subsequent breach or default.

**11. BANKRUPTCY:** If Lessee should be adjudged bankrupt, either voluntary or involuntarily, Lessor shall have the option to forthwith terminate this Lease and reenter the leased premises and take possession thereof. In no event shall this Lease be deemed an asset of the Lessee after adjudication in bankruptcy.

**12. USE OF THE PREMISES:**

A. The Lessee shall use the leased property solely for the purpose of conducting and operating its flood control activities together with such other related uses as shall be reasonably accessory thereto, and it shall not use the lease premises for any purpose prohibited by the laws of the

United States, the State of New Mexico, or the Ordinances of the City of Roswell.

- B. The Lessee shall conduct and operate its activities in such a manner so as to prevent the performance of any act or creation or maintenance of anything which in the opinion of the Lessor may be or become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amounts as to effect the surrounding area of adjoining premises. The Lessor shall be the sole judge as to whether any act done or things created or maintained by Lessee on the leased premises is or may become a nuisance or otherwise noxious or objectionable condition and Lessee agrees to abide by the Lessor's decision and act in accordance with its directions with respect thereto.

**13. NONDISCRIMINATION PROVISIONS:** The Lessee for himself, his personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that 1) no person on the grounds of race, color, sex, national origin, age or disabilities shall be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in the use of said facilities; 2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, national origin, age or disabilities shall be excluded from participation; and 3) that in the event of breach of any of the above nondiscrimination covenants, the City of Roswell shall have the right to terminate the Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

**14. INSPECTION OF PREMISES:** Upon giving reasonable notice to Lessee, Lessor or its agents may enter upon the leased premises during Lessee's regular business hours and have free access to all buildings located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Lessor under the terms and provisions of this Lease.

**15. ASSIGNMENT AND SUBLEASE:** The Lessee shall not assign this Lease nor sublet the leased premises or any portion thereof without written consent of Lessor first had and obtained. In the event of such assignment or sublease, Lessee shall not thereby be relieved of and from its obligation hereunder.

**16. SURRENDER OF PREMISES:** In the event Lessor deems the property necessary for demolition or conversion to its own use, it will notify the Lessee by giving a ninety-day (90) written notice and the Lessee shall surrender the premises within that time.

**17. PARAGRAPH HEADINGS:** The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

**18. NOTICES:**

- A. All notices, requests, or other communications to Lessor shall be given by registered or certified mail addressed as follows:

ATTN: City Manager  
CITY OF ROSWELL  
P.O. Drawer 1838  
Roswell, N.M. 88202-1838

- B. All notices, requests, or other communications to Lessee shall be given by registered or certified mail addressed as follows:

ATTN: Chaves County Flood Control  
C/o Richard T. Smith, Flood Superintendent  
P.O. Box 1817  
Roswell, N.M. 88202-1817

**19. ENTIRE AGREEMENT:** The parties agree that this Lease Agreement incorporates all of the agreements, covenants, and understandings between the parties concerning the subject matter hereof, and that all such covenants, agreements, and understandings have been merged into this written Lease Agreement. Non-prior agreement or understanding of the parties or their agents shall be valid or enforceable unless contained in this Agreement. This Lease Agreement shall not be altered, changed, or amended unless agreed to by the parties. Any amendments to this Lease must be in writing and properly signed.

**20. EFFECT:** the terms and provisions hereof shall extend to, be binding upon the successors and assigns of the parties hereto, and shall be governed by the laws of the State of New Mexico.

**IN WITNESS HEREOF**, this Agreement is executed on the day and year first above written.

**LESSOR: City of Roswell**

**Joe Neeb, City Manager**

Date:

**Attest:**

**Sharon Coll, City Clerk**

Date: \_\_\_\_\_

**LESSEE: Chaves County Flood Control**

Richard T. Smith, Flood Superintendent

Date: \_\_\_\_\_



## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 25, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion only of possible text amendments addressing the use of public parking spaces.

#### **BACKGROUND:**

The City of Roswell provides parking spaces for no cost in locations throughout the downtown area. There have been concerns expressed about how these spaces should be used, specifically, concerning, length of time, as well as the placement of unserviceable vehicles.

This item was tabled at the April Legal Committee meeting.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request.

#### **LEGAL REVIEW:**

N/A.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on Thursday, May 25, 2017

#### **STAFF RECOMMENDATION:**

Discussion of the issue only



## **AGENDA**

### **ROSWELL LEGAL COMMITTEE**

Thursday, May 52, 2017 at 4:00 p.m.  
Conference Room at Roswell City Hall  
425 N. Richardson, Roswell, N.M. 88201

#### **ACTION REQUESTED:**

Discussion of Proposed Ordinance 17-XX to modify Chapter 22 (Streets and Sidewalks), Article V (Recreational Vehicle and Trailer Parking Permitted), Section 22-50.

#### **BACKGROUND:**

Staff is proposing the creation of a new section to allow for overnight parking of recreation vehicles and trailers on City-owned properties for specific events.

#### **FINANCIAL CONSIDERATION:**

There are no additional costs associated with this request.

#### **LEGAL REVIEW:**

The City Attorney has reviewed this proposed ordinance for legal sufficiency.

#### **BOARD OR COMMITTEE ACTION:**

The Legal Committee is scheduled to meet on May 25, 2017.

#### **STAFF RECOMMENDATION:**

Discussion of Proposed Ordinance 17-XX to create a new section, Chapter 22 (Streets and Sidewalks), Article V (Recreational Vehicle and Trailer Parking Permitted), Section 22-50.



## ORDINANCE NO. 17-XX

**AN ORDINANCE OF THE CITY OF ROSWELL MODIFYING CHAPTER 22 (STREETS AND SIDEWALKS), ARTICLE V (RECREATIONAL VEHICLE AND TRAILER PARKING PERMITTED), SECTION 22-50, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, The City of Roswell has determined that there are benefits to the public to be able to park recreation vehicles and trailers as specific events; and,

**WHEREAS**, the City of Roswell City Council has determined that there needs to be criteria established to allow for this to ensure safety and tranquility at these events.

**NOW THEREFORE**, be it ordained by the governing body of the City of Roswell, State of New Mexico:

### **Section 1. Modifications**

#### **CHAPTER 22 - STREETS AND SIDEWALKS**

**(Articles I – IV Omitted for Brevity)**

#### **ARTICLE V. RECREATIONAL VEHICLE AND TRAILER PARKING PERMITTED**

##### **Sec. 22-50. Recreational vehicle and trailer parking permitted.**

**Parking of recreational vehicles and trailers in specific areas may be approved for the following locations as follows:**

- 1. Cielo Grande**
- 2. Convention Center**
- 3. Wool Bowl**
- 4. Any other locations and dates as determined by the City of Roswell**

##### **Sec. 22-56. Parking permit requirements.**

**Parking permits for parking in designated city-owned areas may be purchased from the City for specific events and timeframes, subject to the following criteria.**

- 1. Parking permit holders may utilize electrical power outlets if power receptacles are available onsite.**

2. There shall be no emptying onto the ground of any liquids from the parked vehicles at any time.
3. Parking area to be kept picked up and maintained at all times.
4. No open flames will be permitted at any time for either cooking or campfires onsite.
5. There shall be no alcohol consumed onsite.
6. Music and loud noise shall be minimized so not to adversely affect adjacent vehicles or local residents.
7. The parking permit shall be placed inside the vehicle in a location that is visible from the outside of the vehicle.
8. There shall be no driving of stakes to anchor any canopies or other appurtenances into any paved areas.
9. Any violations of these above criteria will result in the parking permit being revoked and may result in additional penalties and fines.

## **Section 2. SEVERABILITY.**

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

## **Section 3. EFFECTIVE DATE.**

This ordinance shall be effective after five (5) days following its publication as required by State law.

**PASSED, ADOPTED AND APPROVED** this 13th day of July, 2017.

\_\_\_\_\_  
**Dennis Kintigh, Mayor**

ATTEST:

\_\_\_\_\_  
**Sharon Coll, City Clerk**